Volume I

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 438

UNITED STATES, APPELLANT,

vs.

THE SINGER MANUFACTURING COMPANY

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

FILED SEPTEMBER 18, 1962

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208 C, D, E & F—Script for TV announcements for Singer Slant Needle family as recorded August 19, 1959, October 9, 1959 and May 20, 1959	5146	1357
DEFENDANT'S EXHIBITS		
1—Letter from Mr. Stanford, Patent Department, Singer Mfg. Co. to M. L. Waterman, dated March 25, 1954	5163	1365
2—Letter from M. L. Waterman to J. G. Stanford, dated February 11, 1955	5168	1368
3—Letter from Patent Department, Singer Mfg. Co. to M. L. Waterman, dated February 23, 1955	5169	1369
4—Letter from Mr. Stanford, Patent Department, Singer Mfg. Co. to M. L. Waterman, dated December 2, 1954	5171	1370
5—Letter from Patent Department, Singer Mfg. Co. to M. L. Waterman, dated December 16, 1954	5174	1372
6—Transmittal memorandum to Mr. W. P. Evans, Italy from M. L. Waterman with letter dated December 20, 1954	5182	1376
7—Transmittal memorandum to Mr. L. Adamson, Germany from M. L. Waterman with letter dated December 20, 1954	5185	1378
8—Letter from Mr. Adamson to M. L. Waterman, dated January 3, 1955	5188	1380
9—Letter from Mr. Evans, Italy Singer to Mr. M. L. Waterman, dated January 12, 1955	5190	1382
11—Letter from Patent Department, Singer Mfg. Co. to Dr. Lando, Italy Singer, dated June 16, 1955	5194	1383
12—Letter from M. C. Lightner to W. P. Evans, dated August 16, 1955	5197	1385

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13—Letter from W. P. Evans to M. C. Lightner, dated August 30, 1955	5199	1387
15—Letter from Italy Singer to M. L. Waterman, dated October 20, 1955	5202	1388
17—Letter from W. P. Evans to M. L. Waterman, dated October 24, 1955	5205	1390
18—Telegram from Patent Department, Singer Mfg. Co. to Mrs. E. L. Snider, dated October 25, 1955	5206	1391
19—Letter from Patent Department, Singer Mfg. Co. to James M. McKinnon, Tokyo, dated October 25, 1955	5207	1392
20—Letter from Italy Singer to attention of Mr. A. Vigorelli, dated November 19, 1955	5211	1394
21—Letter from Singer Sewing Machine Company, Tokyo to Mr. J. G. Stanford, dated November 26, 1955	5212	1395
22 & 23—Letters from Singer Sewing Machine Company, Tokyo to Mr. J. G. Stanford, dated December 30, 1955 and January 20, 1956	5213	1396-98
24—Letter from Patent Department, Singer Mfg. Co. to Mr. James H. McKinnon, dated January 26, 1955	5217	1401
25—Letter from Singer Sewing Machine Co., Tokyo to Mr. J. G. Stanford, dated January 28, 1956	5219	1402
26—Letter from Patent Department, Singer Mfg. Co. to Mr. J. M. McKinnon, dated February 7, 1956	5221	1405
27—Letter to Mr. Edgar Winteler, dated March 1, 1956	5224	1406
28—Letter from Mr. Stanford, Patent Department, Singer Mfg. Co. to M. L. Waterman, dated March 8, 1956	5225	1408
Proposed letter from Mr. Stanford to Mr. E. Winteler		
29—Letter from Vice President to C. F. Baumann, dated March 9, 1956	5229	1410
30—Cablegram from Waterman, dated April 13, 1956 re "Yesterday's Steckborn Conference"	5230	1411
31—Bernina Agreement—dictated by J. G. Stanford at Zurich, April 15, 1956	5231	1411
Cablegram sent to Mr. Lightner by Mr. Waterman (dictated over phone), April 16, 1956	5238	1419

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34—Letter from Patent Department, Singer Mfg. Co. to Mr. K. Gebhardt, dated February 11, 1957	5241	1420
35—Letter from Patent Department, Singer Mfg. Co. to Mr. M. L. Waterman, dated March 13, 1957	5243	1421
Patent Department Report for the Year 1956	5244	1421
36 (S-8)—Agreement between Singer and Fritz Gegauf, not signed or dated	5247	1422
39—Letter from Patent Department, Singer Mfg. Co. to D. P. Kircher, dated April 16, 1958	5256	1425
40—Memorandum by Mr. Waterman, Subject: Second Visit of Mr. M. Yasui, President of Brother Company, at 149 Broadway, dated May 20, 1958	5257	1426
41—Letter from Mr. Crawford, Singer Sewing Machine Company to Mr. J. M. McKinnon, Tokyo, dated August 5, 1958	5259	1427
42—Letter from Mr. Stanford, Patent Department, Singer Mfg. Co. to Mr. M. L. Waterman, dated August 26, 1958	5260	1428
43—Letter from Patent Department, Singer Mfg. Co. to M. L. Waterman, dated September 17, 1958	5262	1430
44—Letter from Patent Department, Singer Mfg. Co. to M. L. Waterman, dated December 10, 1958	5263	1431
45—Transmittal letter from Patent Department, Singer Mfg. Co. to M. L. Waterman, dated January 14, 1959	5265	1433
Patent Department Report for the year 1958	5266	1433
46—Letter from Leon Jolson, Necchi Sewing Machine Sales Corp. to Mr. Donald Kirchner, dated February 2, 1959	5269	1436
48—Letter to Mr. Leon Jolson, Necchi Sewing Machine Sales Corp. dated February 26, 1959	5271	1437
49—Letter from David S. Kane to Branville M. Brumbaugh, dated April 29, 1959	5272	1438
50—Letter from "Brummie" (B. M. Brumbaugh) to David S. Kane, dated April 30, 1959	5274	1440
51—Letter from Singer Mfg. Co., Director to United States Treasury Department, Bureau of Customs, dated May 13, 1959 (excerpts)	5276	1441
52—Letter from Granville M. Brumbaugh to Frank W. Schattschneider, dated May 18, 1959	5281	1442

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53—Letter from Patent Department, Singer Mfg. Co. to Donald P. Kircher, President, dated October 14, 1959	5282	1443
55—Letter from Patent Department, Singer Mfg. Co. to M. L. Waterman, Vice President, dated August 26, 1958	5286	1444
56—Letter from Patent Department, Singer Mfg. Co. to L. Adamson, Frankfurt, Germany, dated December 31, 1958	5288	1445
57—Letter from Fritz Gegauf, Sr. to M. L. Waterman, dated March 6, 1959	5289	1446
58—Letter from United States Patent Office Examiner to Michael S. Striker, re Serial No. 393,760	5290	1447
59—Letter from Michael S. Striker to Cicogna Franco & C, Italy, dated January 23, 1956 re Serial No. 393,760	5292	1449
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61—Letter from H. J. Stelzer, Sears, Roebuck and Co., to Mr. C. F. Bruder, dated October 15, 1958	5296	1451
62—Letter from Singer Sewing Machine Co., Vice President to Mr. H. J. Stelzer, Sears Roebuck & Co., dated November 13, 1958	5297	1452
63—Letter from H. J. Stelzer, Sears Roebuck & Co. to Mr. C. F. Bruder, dated November 21, 1958	5298	1453
64—Letter from H. J. Stelzer, Sears, Roebuck & Co. to Mr. C. F. Bruder, dated January 8, 1960	5299	1454
66—Letter from M. L. Waterman to M. C. Lightner, dated April 26, 1957	5304	1455
67—Memorandum from M. L. Waterman to Mr. D. P. Kircher, dated November 25, 1959	5306	1457
71—Memorandum from E. Herbst to Mr. M. L. Waterman, dated November 10, 1959 re "Evaluation of Vigorelli Machines"	5317	1460
76—Memorandum from D. G. Robbins to Mr. M. L. Waterman, dated December 28, 1958 re "Vigorelli Embroidery Machine". (excerpts)	5335	1464
77—Letter from Vice President to Mr. Arnaldo Vigorelli, Pavia, Italy, dated January 18, 1960	5337	1465
78—Cablegram from Waterman to Singer for Lightner, dated November 17, 1955	5338	1467

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79—Letter from JBS to "Dear Colleagues", dated 5/9 (1956) (excerpts)	5339	1467
80—Letter from Patent Department, Singer Mfg. Co. to Dr. S. Lando, dated May 22, 1956	5343	1468
81—Letter from Italy Singer to J. G. Stanford, dated May 24, 1956	5351	1474
82—Letter from Ing. Barzano & Zanardo to the attention of Dr. Lando, dated May 23, 1956	5352	1475
84—Letter from Ing. Barzano & Zanardo to Dr. Lando, dated June 7, 1956	5354	1477
85—Letter from L. Adamson to Mr. J. G. Stanford, dated June 15, 1956	5359	1482
86—Letter from Patent Department, Singer Mfg. Co. to L. Adamson, dated June 27, 1956	5361	1484
87—Letter from Patent Department, Singer Mfg. Co. to M. L. Waterman, dated July 10, 1956	5363	1486
89—Letter from M. L. Waterman to L. Adamson, Frankfurt, Germany, dated August 8, 1956 (excerpts)	5365	1487
90—Letter from H. A. Toulmin, Jr. to Singer Mfg. Co., dated March 1, 1957 re "Agreement—Singer Mfg. Co.-Messerschmitt"	5368	1489
"Agreement between Singer Mfg. Co. and Messerschmitt, dated February 11, 1957	5369	1490
91—Letter from Patent Department, Singer Mfg. Co. to Toulmin & Toulmin, dated March 8, 1957	5371	1492
92—Letter from Dr. E. Wiegand to Dr. Stanford, dated May 14, 1957 re "Singer-Messerschmitt Patent Agreement, U.S. Serial No. 548,481	5373	1493
93—Transmittal letter from Dr. E. Wiegand to Mr. Stanford, dated May 16, 1957 re "Singer-Messerschmitt Patent Agreement", U.S. Serial No. 548,481	5376	1496
Incomplete copy of Agreement between Singer Mfg. Co. and Messerschmitt	5377	1496
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94—Letter from Dr. E. Wiegand to Mr. Stanford, dated May 14, 1957	5384	1501
95—Translation of memorandum of conference at Frankfurt/Main on October 14, 1957 between Waterman, Stanford, Busselmeier, Kruger and Niemann	5386	1502

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97—Letter from L. Adamson to J. G. Stanford, dated January 30, 1958 1 re: Agreement between Messerschmitt A.G. and Singer Mfg. Co. (Foreign Patents)	5401	1513
114B—Instruction book for the Borletti 1102 Super-de-luxe automatic (excerpts)	5405	1517
119—Patent Notice employed by Singer on Its Machine Commencing with the Year 1958	5468	1525
124—Defendant's motion for stay filed in United States District Court for the Southern District of New York in the case of The Singer Manufacturing Company v. Brother International Corp., C.A. No. 133-350 (excerpts)	5500	1525
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127—Letter from T. Krzyzaniak, Singer Mfg. Co. to J. G. Stanford, dated August 13, 1959	5538	1528
128—Letter from Patent Department, Singer Mfg. Co. to M. L. Waterman, dated August 20, 1959	5539	1529
129—Letter to J. G. Stanford, dated June 22, 1955	5540	1530
130—Letter from Patent Department, Singer Mfg. Co. to Mr. Charles D. Reed, Brazil, dated November 28, 1956 (excerpts)	5541	1531
131—Letter from Charles A. Williams, Attorney for Messerschmitt to U.S. Patent Office re Serial 548,481	5545	1532
132—Letter to J. G. Stanford from U.S. Patent Office re Serial 548,481	5546	1533
133—Statement showing provisions of Singer-Vigorelli License Agreement, Singer-Gegauf License Agreement and Singer-Messerschmitt License Agreement	5547	1535
134—Statement showing Singer Patents and Singer Machines Covered	5548	1537
135—Statement showing Date of License Agreements, Assignments and Conferences	5549	1538
136—Comparison statement showing Mechanical Elements of Gegauf, Patent No. 2,832,302 as described in Claim 1 and Mechanical Elements of Harris Reissue Patent Application Serial No. 516,058 as described in Claim 22	5550	1539

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138—Note stating "Gegauf wants a million marks for his patent, etc" marked Sunday	5552	1541
146B—Photograph captioned "Here's a feature-by-feature comparison of the fully automatic Necchi and a leading competitive semi-automatic machine	5553	1543
151—Singer Stitch Pattern Comparison Chart 401 and 403 Machines	5555	1544
152—Advertisement of Singer Sewing Centers showing Slant-Needle Singer to do zigzag stitching automatically appearing in 4 magazines for April 1957	5556	1545
153—Statement showing Dollar Amount of Advertising Expenditures for Defendant's Class 404, 403, and 401 Household Sewing Machines During the Period 1957 through 1960	5557	1547
154—Advertisement for Singer Sewing Centers for Singer Slant-O-Matic appearing in 6 magazines for Fall, 1957	5558	1549
155—Advertisement for Singer Sewing Centers presenting the Singer Slant-O-Matic appearing in 5 magazines for February 1958	5559	1550
156—Advertisement for Singer Sewing Centers captioned "A present with a future—if it's a Singer" appearing in 9 magazines for December 1957	5560	1551
157—Advertisment for Singer Sewing Centers captioned "What is Zig-Zag Sewing?" appearing in 15 magazines for Fall 1960	5561	1552
158—Advertisement for Singer Sewing Centers captioned "What's the newest slant on holiday sewing?" appearing in 11 magazines for Autumn-Winter 1960	5562	1553
159—Statement showing Comparative Sales of All Singer Household Sewing Machines for the Years 1958-1960	5563	1555
160—Graphic presentations of Comparative Sales of the Singer 401, 403 and 404 Sewing Machines and Their Predecessors for the years 1958-1960	5564	1557

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162—Graphic presentations of Comparative Sales of All Singer Household Sewing Machines for the years 1958-1960	5566	1559
163—Statement showing Comparison of Sales with Advertising Expenditures of the Singer 401, 403 and 404 Sewing Machines and Their Predecessors for the years 1958-1960	5567	1561
164—Advertisement for Singer Sewing Center captioned "Yours for 3 Whole Days" featuring the Slant-O-Matic	5568	1563
168—Chart captioned "COMPARE" These important features of the Singer Slant-O-Matic with machines from 4 other sources	5574	1564
169—Pamphlet, Shop Meeting Guide, entitled. "Selling Singer Superiority"	5575	1565
170—White Sewing Machine Corporation—Annual Report for Year ending December 31, 1957 (excerpts)	5579	1569
172—Statement showing Production and Sales in the United States of Singer Household Sewing Machines for the years 1947 through 1959	5599	1570
173—Paragraph 150 of the Statement of Facts captioned "Exhibits S-432 to S-500 are true copies of genuine original advertisements which respectively appeared in the mail order catalog listed below, etc.	5601	1571
S Exhibits annexed to Defendant's 173:		
S-433—Advertisement of Signature Sewing Machines appearing in Wards catalog, Fall-Winter 1960	5605	1573
S-452 & S-453—Advertisements of various models of Kenmore Sewing Machines appearing in Sears Catalog, Spring-Summer 1960	5621	1574
S-474—Advertisement of various models of Vogue Sewing Machine and Necchi appearing in Spiegels Catalog, Fall-Winter 1960	5648	1576
S-486—Advertisement of various models of Aldens Sewing Machine appearing in Aldens Catalog, Fall-Winter 1960	5658	1577

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175—Graphic presentations of Japanese Sewing Machines Imported into United States for years 1957, 1958 and 1959	5675	1578
184—Statement showing Imports into the United States of Singer Household Sewing Machines Valued Over $10 for the years 1947 through 1959	5743	1579
185 and 186—Statements of "United States Imports of Sewing Machines for Consumption, Calendar Years 1947 through 1959 and 1948 through 1960" prepared by U.S. Department of Commerce, Bureau of the Census	5745	1581-82
187—Table 6A—Quantity Value of Products Shipped by All Manufacturing Establishments, for the United States: 1954 and 1947 from Manufactures-Industry Statistics	5748	1583
188—Table of "Production, and Quantity and Value of Products Shipped by All Manufacturing Establishments for the United States 1958, dated June 12, 1961, prepared by Department of Commerce, Bureau of the Census	5750	1585
189—Statement showing Units and % of Total Japanese Imports for the Years 1957, 1958 and 1959 for various models of sewing machines	5751	1586
191—Graphic presentations of Comparison of U.S. Singer Production and Imports to Japanese, European & Other Non-Singer Imports & Other Non-Singer U.S. Production of Household Sewing Machines for the Years 1947-59	5753	1587
192—Graphic presentations of Comparison of U.S. Singer Production & Imports to Japanese, European & Other Non-Singer Imports & Other Non-Singer U.S. Production of Household Sewing Machines for the years 1947-59	5755	1588
194—Article entitled "Brother Markets Unit It Calls 'Housewife Engineered'" from publication, Behind The Scenes, November 1958	5756	1589
195 and 197—Advertisements of Brother Sewing Machines showing various models	5757	1591-92
199—Paragraph 3.3 entitled "Radial Cam Layout Distortion" with diagrams	5764	1593
200—Statement of "Manufacture and Assembly of 401 Machine Cams"	5765	1594

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S-11—Complaint of the Singer Manufacturing Company filed before the U.S. Tariff Commission	2479	1596
S-17—Statement captioned "During the period from January 1957 to December 1959, the following U.S. companies have engaged in importing, assembling and or distributing machine-carried multiple cam, replaceable cam, and/or manual zigzag sewing machines manufactured in Japan by the manufacturers listed	2574	1618
S-18—Statement showing names of Japanese manufacturers exporting zigzag sewing machines to United States and model names	2575	1619
S-20—Statement captioned "During the period from January 1957 to December 1959, the following U.S. companies have engaged in importing, assembling and or distributing machine-carried multiple cam, replaceable cam, and/or manual zigzag sewing machines manufactured in Europe by the manufacturers listed	2580	1621
S-21—Statement showing names of European manufacturers exporting zigzag sewing machines to United States and model names	2581	1622
S-31, S-32, S-33, S-34—Excerpts from "Machinery Exports Section, Heavy Industry Bureau, Ministry of International Trade & Industry" giving Lists of Approved Exports of Family Sewing Machines and Destinations for the years 1957, 1958, 1959 and 1960	2591	1623
S-39—Advertisement for Free Westinghouse Sewing Machine captioned "If You're Not Selling this Machine You're Working Too Hard."	2598	1627
S-43—Advertisement for various models of Fleetwood Sewing Machine	2602	1628
S-61—Advertisement for Borletti—New Home Sewing Machine Company	2622	1630
S-72—Advertisement for various models of Brother Sewing Machine from publication, Behind The Scenes, March 1960	2633	1631
S-87, S-88, S-89, S-90, S-91, S-92—Lists for Multiple Cam, Replaceable Cam and Manual showing Model Name, Retailer, Initial Price at Which Store Willing To Sell & Single Price Specified by Store	2676	1633

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S-4	(Gov't. Ex. 86)	3652	1146
S-5	(Gov't. Ex. 96)	3673	1159
S-6	(Gov't. Ex. 95)	3671	1157
S-7	(Gov't. Ex. 27)	3515	1068
S-8	(Def. Ex. 36)	5247	1422
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S-13	(Gov't. Ex. 172)	3882	1229
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S-15	(Gov't. Ex. 179)	4345	1284
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S-92		2681	1646
S-433	(Def. Ex. 173)	5605	1573
S-452	(Def. Ex. 173)	5624	1574
S-453	(Def. Ex. 173)	5625	1575
S-474	(Def. Ex. 173)	5648	1576
S-486	(Def. Ex. 173)	5658	1577

[fol. 2350] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 154-108

UNITED STATES OF AMERICA, Plaintiff,

v.

THE SINGER MANUFACTURING COMPANY, Defendant

COMPLAINT—Filed December 22, 1959

The United States of America, by its attorneys acting under the direction of the Attorney General of the United States, brings this action against the defendant named herein, and complains and alleges as follows:

I

Jurisdiction and Venue

1. This complaint is filed and this action is instituted against the defendant named herein under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended (15 U.S.C. Sec. 4), entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, in order to prevent and restrain continuing violations by the defendant, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act.

2. The defendant maintains an office, transacts business and is found within the Southern District of New York.

II

The Defendant

3. The Singer Manufacturing Company, a corporation organized and existing under the laws of the State of New Jersey and having a principal place of business in New York, New York, is hereby made a defendant herein. It is engaged primarily in the manufacture of sewing ma-

chines, including automatic zigzag sewing machines. It [fol. 2351] sells such machines in the United States through its wholly-owned subsidiary, the Singer Sewing Machine Company.

4. Whenever in this complaint reference is made to any act, deed, or transaction on the part of the defendant, such allegation shall be deemed to mean that the officers, directors, agents or employees of the defendant authorized, ordered or did such act, deed or transaction for, or on behalf of, the defendant while actively engaged in the management, direction and control of its affairs.

III

Co-Conspirators

5. Fritz Gegauf, A.G., Bernina Nahmaschinen Fabrik (hereinafter referred to as "Gegauf"), a corporation organized and existing under the laws of the Republic of Switzerland and having a principal place of business in Steckborn, Switzerland is hereby named as a co-conspirator herein. It is engaged, among other things, in manufacturing automatic zigzag sewing machines in Switzerland and exporting such machines to various countries of the world including the United States.

6. Arnaldo Vigorelli, S.p.A., a corporation organized and existing under the laws of the Italian Republic and having a principal place of business in Pavia, Italy, is hereby named as a co-conspirator herein. It is engaged, among other things, in the business of manufacturing automatic zigzag sewing machines in Italy and exporting such machines to various countries of the world including the United States.

IV

Definitions

7. As used herein:

(a) "Automatic zigzag sewing machine" means a household sewing machine which automatically produces, in addition to straight stitches and without any artistry on the part of the operator, various ornamental and functional zigzag stitch [fol. 2352] patterns, the preselection of which can

be made by the user automatically through a device, such as a dial, handle or knob, located on the exterior of the machine;

(b) "Patent rights" means United States Letters Patent, all applications therefor, and all re-issues, continuations, divisions or extensions thereof.

V

Nature of Trade and Commerce Involved

8. Household sewing machines are designed and sold for use principally in the home for personal sewing needs. There are two basic types of such machines, the so-called "straight stitch" machine which sews only in a straight line and the "zigzag" machine, which, in addition to producing a straight stitch, is capable of sewing various ornamental and functional zigzag stitches. There are several types of zigzag sewing machines differing as to the extent of their automatic features.

9. The automatic zigzag sewing machine as herein defined, is the most recent development in the household sewing machine industry. Since the introduction of automatic zigzag sewing machines a few years ago, their sales have been steadily increasing in proportion to the sales of all other types of machines. In 1958, the defendant sold more units of automatic zigzag sewing machines than of any other single type of household sewing machine and its volume of sales thereof amounted to approximately 45 per cent of its total gross sales of all types of household sewing machines.

10. The defendant is virtually the sole manufacturer of household sewing machines in the United States and is the only domestic manufacturer of automatic zigzag sewing machines. The defendant's only competition in the sale and distribution of automatic zigzag sewing machines in the United States is presented by imports from foreign nations. Such imports account for approximately 34 per [fol. 2353] cent of the retail sales made in the United States. About 10 per cent of the total market is represented by sales of machines imported from European nations and about 24 per cent of it is represented by imports from Japan.

11. Automatic zigzag sewing machines are manufactured by the defendant in the states of New Jersey and South Carolina and are sold and distributed through its subsidiary, the Singer Sewing Machine Company, in interstate trade and commerce to purchasers located in all of the various states of the United States. Automatic zigzag sewing machines manufactured in Europe and Japan are imported into the United States principally by various independent importing and distributing companies which ship and sell them in interstate trade and commerce to retailers and wholesale distributors located in the various states of the United States.

12. The annual gross retail sales of automatic zigzag sewing machines in the United States exceeds $60,000,000. The defendant manufactures and sells approximately 66 per cent of all such machines and its annual gross revenue therefrom is approximately $48,000,000.

VI

Offenses Charged

13. Since at least 1956, the exact date being to the plaintiff unknown, and continuing to the date of filing of this complaint, the defendant and the co-conspirators have been engaged in an unlawful combination and conspiracy to restrain and in an unlawful combination and conspiracy to monopolize for the defendant, and the defendant has unlawfully attempted to monopolize, the aforesaid interstate and foreign trade and commerce in the importation, sale and distribution of automatic zigzag sewing machines in violation of Sections 1 and 2 of the Sherman Act. The defendant threatens to and will continue said offenses unless the relief hereinafter prayed for is granted.

14. The aforesaid combination and conspiracy to restrain and to monopolize consisted of a continuing agreement and concert of action between the defendant and the co-conspirators, the substantial terms of which have been and are that:

[fol. 2354] (a) the co-conspirator Gegauf assign its patent rights to the defendant for the purpose of enabling the defendant to prevent the importation

into the United States of automatic zigzag sewing machines manufactured in Japan;

(b) the defendant use the patent rights assigned to it by Gegauf, in conjunction with its own patent rights for the purpose of excluding the importation into the United States of automatic zigzag sewing machines of foreign manufacture; and

(c) the defendant and co-conspirators determine which European manufacturers shall be permitted to export to the United States foreign manufactured automatic zigzag sewing machines.

15. Pursuant to the aforesaid combination and conspiracy to restrain and to monopolize, the defendant and the co-conspirators did those things which, as heretofore alleged, they combined and conspired to do.

16. In carrying out the aforesaid attempt to monopolize, the defendant has:

(a) obtained the assignment of patent rights from Gegauf for the purpose of enabling the defendant to prevent the importation into the United States of automatic zigzag sewing machines manufactured in Japan;

(b) used the patent rights assigned to it by Gegauf, in conjunction with its own patent rights, to exclude importation into the United States of automatic zigzag sewing machines of foreign manufacture; and

(c) determined, in conjunction with the co-conspirators, which European manufacturers would be permitted to export to the United States foreign manufactured automatic zigzag sewing machines.

[fol. 2355]

VII

Effects

17. The aforesaid offenses, as intended by the defendant and the co-conspirators, have had, among others, the following effects:

A. United States importers, distributors and retailers dealing in automatic zigzag sewing machines of

foreign manufacture have been precluded from importing, distributing and selling such machines in a market free from unlawful restraints.

B. Defendant has maintained a position of domination and control in the manufacture, sale and distribution of automatic zigzag sewing machines in the United States.

C. Consumers have been deprived of the opportunity of purchasing automatic zigzag sewing machines in a free and competitive market.

Prayer

Wherefore, the plaintiff prays:

1. That the Court adjudge and decree that the defendant and the co-conspirators have combined and conspired to restrain and have combined and conspired to monopolize for the defendant, and that the defendant has attempted to monopolize, interstate and foreign trade and commerce in automatic zigzag sewing machines, in violation of Sections 1 and 2 of the Sherman Act.

2. That the defendant and its successors, officers, directors, managers, agents, representatives, employees, and all persons or corporations acting or claiming to act under, through or on behalf of them or any of them be perpetually enjoined and restrained from continuing to carry out, directly or indirectly, the aforesaid combination and conspiracy to restrain and to monopolize, and the attempt to monopolize, the aforesaid interstate and foreign trade and commerce in automatic zigzag sewing machines, or any [fol. 2356] combination and conspiracy having like or similar purposes and effects.

3. That the Court adjudge and decree that the defendant has used patent rights unlawfully in instituting, effectuating, and maintaining the aforesaid combination and conspiracy to restrain and to monopolize, and in attempting to monopolize, and enter such orders relating to any and all of its present and future patent rights as the Court may deem appropriate and necessary to dissipate the effects of the violations herein alleged, and to establish free and unfettered competition in the trade and commerce herein described.

4. That the plaintiff have such other, further and different relief as the nature of the case may require and the Court may deem just and proper in the premises.

5. That the plaintiff recover the cost of this suit.

Dated: New York, New York December 22, 1959.

/s/ John D. Swartz. /s/ William J. Elkins. /s/ Edward F. Corcoran, Attorneys, Department of Justice.

/s/ William P. Rogers, Attorney General. /s/ Robert A. Bicks, Acting Assistant Attorney General. /s/ Raymond M. Carlson, /s/ Richard B. O'Donnell, Attorneys, Department of Justice.

[fol. 2357] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

Civil Action No. 154-108

ANSWER—filed January 12, 1960

Defendant, The Singer Manufacturing Company, for its Answer to the Complaint, alleges, avers and denies as follows:

1. With respect to Paragraph 1 of the Complaint, Defendant admits that this Court has jurisdiction over the cause of action alleged in the Complaint, but denies that it has committed any of the acts of restraint or conspiracy as complained of in said Complaint, and denies that Plaintiff is entitled to the relief prayed for in the said Complaint.

2. Defendant admits the allegations of Paragraph 2 of the Complaint.

3. Defendant admits the allegations of Paragraph 3 of the Complaint.

4. Answering Paragraph 4 of the Complaint Defendant

admits that from time-to-time its officers, directors, agents and employees are authorized to and in fact do carry out certain transactions for and on behalf of the Defendant but Defendant denies that it or its officers, directors, agents and employees have engaged in or committed or caused [fol. 2358] Defendant to engage in or commit any of the acts of restraint or conspiracy as complained of in said Complaint.

5. Answering Paragraph 5 of the Complaint, Defendant admits that Fritz Gegauf A.G., Bernina Nahmaschinen Fabrik (hereinafter referred to as "Gegauf") is a corporation organized and existing under the laws of the Republic of Switzerland, has a principal place of business in Steckborn, Switzerland and is engaged, among other things, in manufacturing automatic zigzag sewings machines in Switzerland and exporting such machines to various countries of the world including the United States. Defendant denies that Defendant and Gegauf conspired to engage in or have been engaged in any unlawful conspiracy or combination.

6. Answering Paragraph 6 of the Complaint, Defendant admits that Arnaldo Vigorelli, S.p.A., is a corporation organized and existing under the laws of the Italian Republic, has a principal place of business in Pavia, Italy, and is engaged, among other things, in the business of manufacturing automatic zigzag sewing machines in Italy and exporting such machines to various countries of the world including the United States. Defendant denies that Defendant and Vigorelli conspired to engage in or have been engaged in any unlawful conspiracy or combination.

7(a). Defendant admits that Paragraph 7(a) of the Complaint defines one type of automatic zigzag sewing machine and that as used in the Complaint the words "automatic zigzag sewing machine" refer to such type of machine, but Defendant denies any and every implication that this definition includes all types of automatic zigzag sewing machines.

[fol. 2359] 7(b). Defendant admits the allegations of Paragraph 7(b) of the Complaint.

8. Defendant admits the allegations of Paragraph 8 of the Complaint except that Defendant denies any and every

implication that various ornamental and functional zigzag stitches cannot be produced on a straight stitch sewing machine.

9. Answering Paragraph 9 of the Complaint Defendant admits that the automatic zigzag sewing machine as defined in Paragraph 7(a) of the Complaint is one of the most recent developments in the household sewing machine industry and that since the introduction of such automatic zigzag sewing machines a few years ago, their sales have been steadily increasing. Defendant denies each and every other allegation contained in Paragraph 9 of the Complaint.

10. Answering Paragraph 10 of the Complaint Defendant admits that it is the largest manufacturer of household sewing machines in the United States and is the only domestic manufacturer of automatic zigzag sewing machines and that Defendant's only competition in the sale and distribution of automatic zigzag sewing machines in the United States is presented by imports from foreign nations. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 10 of the Complaint.

11. Answering Paragraph 11 of the Complaint Defendant admits that automatic zigzag sewing machines are manufactured by the Defendant in the states of New Jersey and South Carolina and are sold and distributed through its subsidiary, Singer Sewing Machine Company in interstate trade and commerce to purchasers located in all of the [fol. 2360] various states of the United States. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 11 of the Complaint.

12. Answering Paragraph 12 of the Complaint Defendant admits that its annual gross revenue from retail sales of automatic zigzag sewing machines in the United States is approximately $48,000,000. Defendant is without knowledge or sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 12 of the Complaint.

13. Defendant denies each and every allegation contained in Paragraph 13 of the Complaint.

14. Defendant denies each and every allegation contained in Paragraph 14 of the Complaint.

15. Defendant denies each and every allegation contained in Paragraph 15 of the Complaint.

16. Answering Paragraph 16 of the Complaint Defendant admits that it purchased and obtained by assignment from Gegauf certain patent rights and that Defendant has endeavored to enforce such patent rights together with certain other patent rights owned by Defendant against infringers of such patent rights in the United States. Defendant denies each and every other allegation contained in Paragraph 16 of the Complaint.

17. Defendant denies each and every allegation contained in Paragraph 17 of the Complaint.

Wherefore, Defendant prays:

a) That the Complaint herein be dismissed.

[fol. 2361] b) That Defendant have such other and further relief as this Court may deem just and proper under the circumstances.

Winthrop, Stimson, Putnam & Roberts, Attorneys for Defendant. By Arthur E. Pettit, A Member of Said Firm, Office and Post Office Address, 40 Wall Street, New York 5, New York.

[fol. 2361a] Acknowledgment of service (omitted in printing)

[fol. 2362] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 154-108

[Title omitted]

ORDER AMENDING COMPLAINT—March 28, 1960

Whereas the plaintiff having moved to amend the third sentence of paragraph 9 of the Complaint herein by inserting after the words "defendant sold," and after the

words "gross sales," the words "in the United States," and the defendant having interposed no objection, it is hereby

Ordered that the third sentence of paragraph 9 of the Complaint be and hereby is amended so as to read:

> . . . In 1958, the defendant sold in the United States, more units of automatic zigzag sewing machines than of any other single type of household sewing machine and its volume of sales thereof amounted to approximately 45 per cent of its total gross sales in the United States of all types of household sewing machines.

Dated: New York, N. Y., March 28, 1960.

Sylvester J. Ryan, Chief Judge.

[fol. 2363] [File endorsement omitted]

In United States District Court, Southern District of New York

Civil Action No. 154-108

[Title omitted]

Order Amending Answer—April 4, 1960

Whereas an Order of this Court was entered herein on March 28, 1960, amending the third sentence of paragraph 9 of the Complaint to read as follows:

> . . . In 1958, the defendant sold in the United States, more units of automatic zigzag sewing machines than of any other single type of household sewing machine and its volume of sales thereof amounted to approximately 45 per cent of its total gross sales in the United States of all types of household sewing machines.

Now, Therefore, the parties having agreed hereto, it is hereby

Ordered that paragraph 9 of the Answer in the form in

which it therein appears shall be deemed to apply to and to answer the allegations of paragraph 9 of the Complaint, as amended.

Dated: New York, N. Y., April 4, 1960.

Sylvester J. Ryan, Chief Judge.

Entry of an order in the above form is hereby consented to.

William J. Elkins, Attorney for Plaintiff. Winthrop, Stimson, Putnam & Roberts. By Arthur E. Pettit, A member of the firm, Attorneys for Defendant.

[fol. 2363a] Acknowledgment of service (omitted in printing)

[fol. 2990] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 154-168

[Title omitted]

PLAINTIFF'S MEMORANDUM RE DEFENDANT'S INTERROGATORIES —March 4, 1960

I. Preliminary Statement

The purpose of this statement is to describe the proceedings to date and further, and more importantly, to acquaint the Court with the issues of this case in relation to, what plaintiff submits, is the extraneous and needless scope of defendant's interrogatories.

The Complaint, filed on December 22, 1959, alleges that in or about the year 1956 the defendant and co-conspirators, Fritz Gegauf, A.G., Bernina Nahmaschinen, a corporation of the Republic of Sweden, and Arnaldo Vigorelli, S.p.A., a corporation of the Italian Republic, have been and are engaged in an unlawful combination and conspiracy to restrain and to monopolize interstate and foreign commerce in "automatic zigzag sewing machines" in violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. Sec. 1 and 2). The Complaint also alleges that the defendant has unlawfully attempted to monopolize that trade and commerce in violation of Section 2 of the Sherman Act (15 U.S.C. Sec. 2).

The "automatic zigzag sewing machines" referred to in the Complaint are defined therein as those sewing machines which automatically produce various ornamental and zigzag [fol. 2991] stitch patterns, the preselection of which can be made by the user by turning a dial or other device located on the exterior of the machine.

The Complaint specifically alleges in paragraph 14 thereof that the alleged combination and conspiracy to restrain and to monopolize consisted of a continuing agreement and

concert of action, the substantial terms of which have been and are that:

14.(a) the co-conspirator Gegauf assign its patent rights to the defendant for the purpose of enabling the defendant to prevent the importation into the United States of automatic zigzag sewing machines manufactured in Japan;

(b) the defendant use the patent rights assigned to it by Gegauf, in conjunction with its own patent rights for the purpose of excluding the importation into the United States of automatic zigzag sewing machines of foreign manufacture; and

(c) the defendant and co-conspirators determine which European manufacturers shall be permitted to export to the United States foreign manufactured automatic zigzag sewing machines.

The Complaint further alleges that in carrying out the attempt to monopolize, the defendant has:

(a) Obtained the assignment of patent rights from Gegauf for the purpose of enabling the defendant to prevent the importation into the United States of automatic zigzag sewing machines manufactured in Japan;

(b) used the patent rights assigned to it by Gegauf, in conjunction with its own patent rights, to exclude importation into the United States of automatic zigzag sewing machines of foreign manufacture; and

(c) determined, in conjunction with the co-conspirators, which European manufacturers would be permitted to export to the United States foreign manufactured automatic zigzag sewing machines.

[fols. 2992-3011] The defendant filed its Answer on January 12, 1960, admitting jurisdiction and venue and denying most of the material allegations thereof.

On February 14, 1960, the defendant propounded interrogatories and by Stipulation the time for the plaintiff to

answer or object was extended to March 4, 1960. The plaintiff has answered certain of the defendant's interrogatories and, as to the remainder, served the defendant on March 4, 1960 with its objections thereto.

II. Consideration of Defendant's Interrogatories Should Be Deferred Pending Plaintiff's Discovery

It is apparent from the above quoted charging section of the Complaint, that the issues in this proceeding are indeed, simple. The principal issue, generally stated, is whether the defendant engaged in a conspiracy under which the co-conspirator, Gegauf, would assign its patent rights to defendant so that the defendant could use such rights for the purpose of excluding imports and, further, whether the defendant attempted to effectuate such exclusion.

[fols. 3076-3101] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 154-108

[Title omitted]

PLAINTIFF'S ANSWERS TO DEFENDANT'S AMENDED INTERROGATORIES NOS. 5 THROUGH 9—Filed May 11, 1960

The plaintiff submits the following answers to the above designated interrogatories.

* * * * * * * *

Interrogatory No. 6

In view of certain of the language of this interrogatory, plaintiff deems it necessary to first state that the alleged conspiracy is a single continuing conspiracy, rather than several, between the defendant and co-conspirators.

* * * * * * * *

[fols. 2917-2942] IN UNITED STATES DISTRICT COURT

Civ. 154-108

UNITED STATES OF AMERICA,

v.

THE SINGER MANUFACTURING COMPANY

Transcript of pre-trial hearing—New York, November 10, 1960, 11:30 a.m.

Before: Hon. Sylvester J. Ryan, District Judge.

PRESENT: Mr. Elkins, Mr. Corcoran, Mr. Farrell, Mr. Klots, Mr. Pettit, Mr. Wesely, Mr. Williams.

* * * * * * *

[fols. 2943-2945] COLLOQUY RE FILING OF STATEMENT OF FACTS

Mr. Pettit: You better know what I have here, your Honor. I don't have here a request for admission. I have already made those. He has not responded to them in the way I think he should have responded to them. I am asking for an order based upon his failure to answer these requests for admission, that they be deemed admitted for the purpose of this litigation.

The Court: Why shouldn't that be done? Either you should admit them or tell them you deny them.

* * * * * * *

[fol. 2946] The Court:

* * * * * * *

[fol. 2947] I suggested some time ago that the government serve upon the defendant in rather informal fashion a statement of facts that you feel in fairness are undisputed and are relevant to your complaint and to the claims that you make; that then they, as the next step, go over that and admit such portions of your requests as they can and, in addition to that, where they cannot admit in the words

you have phrased it, to rephrase it in such language as they can. In that way we will get some of these facts stipulated.

In that connection, you give them a list of documents that you think are relevant to the claims you assert here and that they will concede. Let them come back with an admission or consent that they be received in evidence. After that, the defendant will give you a statement of facts that you haven't already proposed that they think are undisputed and you in turn follow the same course as I have asked them to do with reference to yours. You are familiar with this procedure. Nobody is better familiar with it than you, and you recognize its merits in these cases. [fols. 2948-2951] This has to be done. I would prefer that you do it without too much supervision by me. But to the end that there be no progress made, I am going to have a review calendar, but I will put this down for 4 o'clock on the afternoon some day in December. If Singer is violating the law, they should be enjoined. If not, they should have the benefit of their investments. It is too an important an industry today to be tied up this way.

. . . . . .

[fols. 2952-2953] The Court: On his motion to deem these facts admitted, we are going to adjourn the hearing of this motion to November 30th at 10 a.m. We are going to devote, if necessary, the whole of that day to get this thing moving. We are going to have a hearing informally, without a stenographer present, and we are going to get these facts in line. I think I have a right to ask cooperation from both of you, and ask your cooperation as reputable members of the Bar.

Prior to the 30th, Mr. Elkins, you will start the ball rolling and give him a statement of what you feel you can concede as factual.

Mr. Elkins: That is the only way to do it.

. . . . . .

[fols. 2954-2958] The Court: I think you should start off with the statement. The starting point should be from the plaintiff. You should give him the first statement. I don't want to push you too hard.

Mr. Elkins: Does this have to be the whole thing?

The Court: The aim should be to make it as full as possible and all-embracive as possible. That does not mean that you won't come in later on with other requests that may occur to you in the course of preparation. But it does mean that you should not be holding back any card to be played later on. It should be done in good faith.

. . . . . .

[fol. 2959] The Court:

. . . . . .

You give them the statement they want by the 24th of November. If that is not complete, then they are not to [fols. 2960-2963] serve their statement until after we have a hearing. But as to those matters that you request, they will give you an answer before the 30th. On the 30th, you will come in here with the balance of the statement that you think they should concede and they will come in with a statement which we will take up after we rule on yours, on what they think you should concede, and we will make rulings and concessions right here on the record at that time.

. . . . . .

[fol. 3267] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

Civil Action No. 154-108

ORDER REQUIRING PARTIES TO PREPARE LIST OF EXHIBITS TO BE OFFERED IN EVIDENCE AND TO FILE STATEMENT OF CONTENTIONS—February 17, 1961.

The plaintiff having moved before me on February 11, 1960 for an order assigning this case to a Judge of this Court for all purposes, including the hearing of all motions and other applications preliminary to trial of this cause, the conducting of all pre-trial procedures, and the presiding at the trial of this cause; and for such other and further relief as to this Court may seem just and proper; and such motion having been granted to the extent that all motions shall be made returnable before me; and pre-trial hearings having been held on February 29, March 21 and 28, September 13, November 10, 18, 23 and 30 and December 28, 1960, January 3, 4, 12, 23 and 26, February 3 and 16, 1961: and the parties having exchanged numerous proposals for agreement; and due deliberation having been had; it is

Ordered that a list of exhibits which may be offered in evidence at the trial be prepared, and to that end, within ten days from the date hereof, plaintiff, following service of a copy of this list on defendant, shall file with the Court a designation of the documents which may be so offered by [fol. 3268] plaintiff, and that within twenty days from the date hereof, defendant, after service of a copy on plaintiff, shall file with the Court a listing and designation of the documents which may be so offered by defendant; and it is further

Ordered that twenty days from the date hereof, plaintiff, after service of a copy on defendant, shall file with the Court a statement of plaintiff's contentions in support of its claim in the above-captioned action; and it is further

Ordered that thirty days from the date hereof, defendant,

after service of a copy on plaintiff, shall file with the Court a statement of defendant's contentions in support of its defense in the above-captioned action; and it is further

Ordered that the trial of the above-captioned action shall commence before me on April 4th, 1961 at 10 a.m. in Room 129.

Dated: New York, New York, February 17th, 1961.

/s/ Sylvester J. Ryan, Chief Judge.

[fols. 2364-2368] IN UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 154-108

UNITED STATES OF AMERICA, Plaintiff,

against

THE SINGER MANUFACTURING COMPANY, Defendant.

STIPULATION—February 23, 1961

It Is Stipulated and Agreed that, for the purpose of this action, any new trial or re-trial of this action or any trial of an action between the above-captioned parties arising out of the conduct, transaction, occurrence or series of transactions or occurrences complained of in this action, and for no other purpose, the matters set forth in the Statement of Facts, annexed hereto and made a part hereof, shall be deemed to be true, reserving to each party the right to object to the introduction into evidence of any part thereof on the grounds of relevancy or materiality and the right to introduce further evidence, not inconsistent therewith, at the trial.

Dated: New York, New York, February 23, 1961.

/s/ William J. Elkins, Attorney for Plaintiff. s/ Winthrop, Stimson, Putnam & Roberts, Attorneys for Defendant. /s/ by Arthur E. Pettit, s/ Partner.

So Ordered: March 20, 1961.

/s/ Sylvester J. Ryan, Chief Judge.

[fol. 2369] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 154-108

[Title omitted]

STATEMENT OF FACTS—FEBRUARY 23, 1961

1. The Singer Manufacturing Company, the defendant herein, is a corporation organized and existing under the laws of the State of New Jersey, having its principal place of business in the County of New York of the State of New York, the same being within the Southern District of New York.

2. Said defendant is and during the entire period covered by the subject complaint has been engaged in the manufacture of sewing machines, including zigzag sewing machines, both in the United States and abroad.

3. Fritz Gegauf, A. G., Bernina Nahmaschinen Fabrik (hereinafter referred to as "Gegauf") is a corporation organized and existing under the laws of the Republic of Switzerland and having a principal place of business in Steckborn, Switzerland, and is, and during the entire period covered by the subject complaint has been engaged, among other things, in manufacturing sewing machines, includ-
[fol. 2370] ing zigzag sewing machines, in Switzerland and exporting such machines to various countries of the world including the United States.

4. Arnaldo Vigorelli, S.p.a. (hereinafter referred to as "Vigorelli") is a corporation organized and existing under the laws of the Italian Republic, having a principal place of business in Pavia, Italy, and is, and during the entire period covered by the subject complaint has been engaged, among other things, in the business of manufacturing sewing machines, including zigzag sewing machines, in Italy and exporting such machines to various countries of the world including the United States.

5. Household sewing machines are designed and sold for use principally by housewives for personal sewing needs.

6. The straight stitch type of household sewing machine comprises three basic devices, namely, a thread-carrying

needle which reciprocates in a vertical direction but does not move transverse to the direction of the work feed, a loop-taker which, cooperating with the needle, forms a straight line of stitches, and a mechanism which feeds the work to be stitched between such needle and loop-taker. These three devices are driven in synchronism by an electric motor or by an operator using a treadle, hand-crank, or similar mechanism. The speed of the machine, the length of the stitches and the direction of the feed may be varied by the operator.

7. The zigzag stitch machine has all of the features and functions of a straight stitch machine and may be operated as a straight stitch machine. In addition, the needle may be [fol. 2371] shifted back and forth laterally of the normal direction of the work feed, from zero to maximum, within the field of lateral throw of the needle, from a fixed neutral position of nonvibration in the center of such field of throw, so as to produce stitches that follow a zigzag path. The size and shape of the pattern of the zigzag stitch may be altered by varying the amplitude of the lateral needle movements and the amplitude and/or direction of the work-feeding movements. Mechanism may be provided for fixing a neutral position of nonvibration of the needle at either the center or at either side of the field of the lateral throw of the needle and for controlling the lateral throw of the needle within such field, from zero to maximum, either across a center line through such field or from either side of such field. Mechanism may also be provided, whereby the needle can be laterally vibrated through predetermined patterns of movement modifying the zigzag stitch path, with the result that stitches may be made having various ornamental shapes other than plain zigzag.

8. There are three general types of household zigzag sewing machines:

Manually Operated Zigzag Machine

(a) A household sewing machine which, in addition to straight stitches, produces continuous plain zigzag stitches and, by manual manipulation, during the operation of the machine, of a handle or lever located on the exterior of the machine, various ornamental and functional zigzag stitch

[fol. 2372] patterns, hereinafter referred to as a manually operated zigzag machine.

Replaceable Cam Zigzag Machine

(b) A household sewing machine which, in addition to straight stitches, produces without any artistry on the part of the operator, various ornamental and functional zigzag stitch patterns, the preselection of which must be made by the user through the manual removal from the machine of one or more cams and the manual replacement of such cam or cams by one or more substitute cams having cam configurations different from the replaced cams, hereinafter referred to as a replaceable cam zigzag machine.

Machine-Carried Multiple Cam Zigzag Machine

(c) A household sewing machine which, in addition to straight stitches, produces without any artistry on the part of the operator, various ornamental and functional zigzag stitch patterns, the preselection of which must be made by the user through a device such as a dial, handle or knob, located on the exterior of the machine, which effects a relative shifting of cam tracking means and a group of machine-carried cams, each having cam configurations different from the other cams, hereinafter referred to as a machine-carried multiple-cam zigzag machine.

9. The defendant presently manufactures household straight stitch and replaceable cam (Par. 8(b)) and machine-carried multiple-cam (Par. 8(c)) zigzag stitch sewing machines in the States of New Jersey and South Carolina and distributes them in the various States of the United [fol. 2373] States through a wholly-owned subsidiary, Singer Sewing Machine Company, which operates some 1600 retail stores throughout the United States. The principal portion of defendant's sales in the United States are through such retail stores. In addition, leased outlets are operated by Singer Sewing Machine Company in approximately 80 department stores located in various States of the United States. It also sells at wholesale to approximately 270 independent retail stores. Defendant also sells household sewing machines, including all three types of

zigzag machines, in various foreign countries of the world, outside the Iron Curtain, through its own and independent distributors, who operate thousands of retail stores in such countries. Defendant owns and operates plants manufacturing various types of machines in some 14 foreign countries.

10. Directly after World War II household straight stitch sewing machines were manufactured in the United States by White Sewing Machine Corporation, Free Sewing Machine Company, Inc., The Bell Manufacturing Corporation, Burtman Electric Company, Gelman Manufacturing Company, Inc., and The New Process Gear Company as well as defendant. By 1959 with the exception of The New Process Gear Company, which manufactures only straight stitch sewing machines on specifications and orders from a single domestic customer, defendant was and now is the sole manufacturer of household sewing machines in the United States.

11. In the year 1948 importations of household sewing machines from Japan amounted to 3,000 machines. In the year 1959 importations of household sewing machines from [fol. 2374] Japan amounted to 1,100,000 machines.

12. The only sale and distribution in the United States of sewing machines, including zigzag machines, other than those of defendant and New Process Gear Company, are of machines imported into the United States.

13. Users of industrial sewing machines, both in the United States and abroad, employed zigzag sewing machines from prior to 1900. The known art at that time is illustrated by Leilich U.S. Patent No. 386,252, July 17, 1888 which disclosed an ornamental zigzag stitch sewing machine. This machine had two replaceable cams, one of which imparted lateral zigzag movement to the needle while the other controlled the amplitude of the work-feeding movement. Such cams could be replaced by other cams giving the operator a choice of ornamental stitches.

14. The first zigzag stitch sewing machine manufactured especially for use in the home presently known to the parties was the Class 206 machine (manually operated—Par. 8(a)). It is stipulated that if called to testify employees of the defendant Singer would state under oath that this machine was manufactured by Singer in its German plant

from approximately 1934 to the opening of World War II, after which, commencing in 1949, similar machines were manufactured in the Singer factory in Scotland, importation and sale of which in the United States commenced in 1951; and further that this machine is illustrated in the United States Singer-owned Tiesler Patent No. 2,014,916, September 17, 1935; and further that this machine pri- [fol. 2375] marily differs from the above Leilich unit in that it is provided with a built-in rotating cam, rather than the replaceable cam, which imparts a fixed lateral throw to the needle at all times; and further that mechanism is provided so that by manual manipulation during the stitching cycle the throw of the cam can be modified and the amplitude of the zigzag stitch varied. From 1934 to 1951 this machine was offered to the home user by Singer outside the United States.

15. In 1948 shipments of an Italian-made Necchi zigzag stitch machine (manually operated—Par. 8(a)) were first made to the United States and by 1951 sales of such machines commercially demonstrated that a definite market in a household type zigzag sewing machine existed in the United States. Like the Singer machine, the Necchi machine's single needle-vibrating cam could not be replaced, but by manual manipulation the throw of the cam could be modified and the amplitude of the zigzag stitch varied.

16. In 1952 the Elna zigzag machine (replaceable cam —Par. 8(b)) was introduced in the United States. Such machine is disclosed in United States patent of Casas Robert et al., No. 2,682,845, July 6, 1954. The Elna machine, as the Leilich machine, had two rotary cams and two cam followers; one cam imparted lateral movements to the needle; the other altered the feeding movements in synchronism with the needle producing various ornamental stitch patterns. The two cams of the Elna machine were replaceable by other cams so that various stitch patterns [fol. 2376] could be produced. Unlike those of the Leilich machine, the Elna cams were positioned within the machine and accessible through a hatch.

17. Ralph E. Johnson, a member of Singer's Experimental Department in Elizabethport, New Jersey, commenced work on the development of a household zigzag machine and completed a design of a new machine on April 29, 1953. This design is embodied in the Singer Class 401

machine. The Class 401 machine (machine-carried multiple cam—Par. 8(c)) incorporates a stack of rotary cams and a pair of cam followers, movable lengthwise of the axis of the cam stack, either of which can track any one cam or in combination can track any two cams, whereby information from such cam or cams can be utilized to control the lateral movements of the needle. The Class 401 machine is disclosed in Johnson U. S. Patent No. 2,862,468 issued December 2, 1958, which was filed November 29, 1954. It is stipulated that if called to testify, employees of the defendant Singer would state under oath that the design of the Class 401 machine required the manufacture of a new sewing machine which in turn required four years of defendant Singer to develop and produce the necessary manufacturing and assembly tools to permit manufacture of the machine in an efficient and economical manner. The Class 401 machine was placed on the market in June 1957.

18. On March 9, 1953 Martin R. Perla and Edward Koenig, members of Singer's Experimental Department in Bridgeport, Connecticut, were directed to design and develop an improved Class 206 machine, which was to in- [fol. 2377] corporate a replaceable cam. The design of this machine was completed by March 25, 1953 and is embodied in the Singer Class 306 machine (replaceable cam —Par. 8(b)). This design eliminated the cam of the Class 206 machine and superimposed on such machine a zigzag mechanism having a rotary removable cam, otherwise leaving the Class 206 machine substantially in its then existing form. Manufacture and sale of this Class 306 machine was started in the United States and abroad in 1954 and a substantial number of said machines were sold in the United States until 1956 when manufacture, but not sale, thereof in the United States was stopped and manufacture of a new Class 319 machine was commenced both abroad and in the United States. The Class 306 machine continues to be manufactured and sold abroad. The Class 306 machine is disclosed in Singer-owned United States Patent No. 2,756,703, July 31, 1956.

19. If called to testify an employee of Singer would state under oath that on April 1, 1954, Martin R. Perla was directed to design and develop an improved Class 306 machine, which incorporated a multiple cam arrangement in lieu of the replaceable cam of the Class 306 machine and

that Mr. Perla completed this design by May 10, 1954. This design was incorporated in the Singer Class 319 machine. The Class 319 machine (machine-carried multiple cam—Par. 8(c)) incorporates a plurality of cams, each with its own follower. The cam followers may be used singly or in combination to track one or more selected cams, whereby the information from such cam or cams is utilized to control the lateral movements of the needle. The Class 319 [fol. 2378] machine is disclosed in Patent No. 2,810,360, which was filed December 8, 1954. The sale of the Class 319 machine was commenced in 1956, both in the United States and abroad. Manufacture of the Class 319 machine was discontinued in the United States in 1957 when it was superseded by the Class 401 machine. The Class 319 machine continues to be manufactured and sold abroad. The 319 machine being of substantially similar construction to that of the 306 machine, except in so far as their rotary cam mechanisms differed, tools for its production and assembly could be prepared in a short period with little expense. If called to testify, an employee of Singer would testify under oath that production of the 319 machine was ordered commenced in order to place such a machine on the market as soon as possible. Such production commenced on November 18, 1955.

20. During the development period of the Class 306, 319 and 401 machines, respectively, Singer commenced investigations to determine if Singer were free, from a patent standpoint, to manufacture and market such machines in the various countries of the world. This investigation was continued from time to time during the tooling period of these three machines. Patent applications covering the designs for such machines were prepared and filed in various countries of the world, including the United States. Such patent applications in the United States matured into the patents referred to in paragraphs 17 through 19. The foreign applications corresponded to the aforesaid United States applications. These investigations developed no United States patents during the year 1953 or 1954 containing claims which in defendant's opinion would interfere with the proposed Class 306, 319 or 401 machines. [fol. 2379] 21. In September, 1953 the Italian firm of Vigorelli introduced in the United States a multi-cam zigzag stitch sewing machine (Par. 8(c)). The Vigorelli machine

incorporated a unitary stack of removable rotary cams, a single cam follower, movable lengthwise of the axis of the cam stack, for tracking any one of such cams, and means for transmitting the motion of the follower to the needle. This, in the opinion of Singer, involved, among others, two ideas, one of which was incorporated in the Singer 306 design and one of which was incorporated in the Singer 319 and 401 designs. The first idea comprised the idea of utilizing, in combination, a replaceable cam, a cam follower and a means to transmit the motion of such cam follower to the needle bar for the purpose of controlling the lateral needle vibration, in accordance with the shape of the cam, which motion transmitting means included a manually operable mechanism for adjusting and varying the amplitude of such lateral needle vibrations and for determining the neutral position of non-vibration of the needle. This idea was incorporated in the Singer 306 design. The second idea comprised the idea of utilizing, in combination, a plurality of cams, cam following means and means to transmit the motion of the cam following means to the needle bar for the purpose of controlling the lateral needle vibration in accordance with the shape of any cam, which motion transmitting means included a manually operable mechanism for engaging the cam following means with any one of the cams. This idea was incorporated in the Singer 319 and 401 designs.

[f. 1.2380] 22. The first Japanese-made multi-cam zigzag stitch machine (Par. 8(c)) introduced in the United States was that of Brother International Corporation which arrived in the United States in September 1954. This machine, as the Singer 401 and the Vigorelli machine, incorporated a plurality of rotary cams and a single cam follower which could be engaged with any one of the cams for laterally vibrating the needle through a predetermined pattern of movement.

23. In April 1955 Singer first learned that Vigorelli had introduced into the United States a modified form of its multi-cam machine (Par. 8(c)). Such modified form differed from the first machine in that in the modified form the single cam follower was adapted not only to engage any one of the cams but in addition to engage any two adjacently disposed cams, which provided an additional variety of ornamental stitches. The second Vigorelli ma-

chine is disclosed in British Vigorelli Patent No. 736,277. With respect to this second Vigorelli machine, Singer's Patent Department wrote to Max L. Waterman, Vice President of Singer and head of its research and development department, a letter dated April 26, 1955, which is Exhibit S-1.

24. In October, 1953 Singer obtained the Vigorelli multicam zigzag stitch machine, which it subsequently concluded had first been imported and sold in the United States during September, and sent the machine to Singer's Elizabethport Experimental Department for examination. At that time [fol. 2381] Singer had completed the designs for its Class 306 and 401 machines, and these machines were in the process of being developed.

25. Because of the sale of the Vigorelli machine in the United States in September, 1953, Singer in October, 1953 concluded that it must assume that Vigorelli had invented the zigzag stitch mechanism contained therein prior to the time of the invention by Singer of the zigzag stitch mechanism to be incorporated in the 306 machine and that it should be presumed that Vigorelli had on file in various patent offices of the world, including that of the United States, patent applications containing claims which would be infringed by the Singer designs. Singer's apprehension at that time was directed primarily to the Class 306 machine for which tooling had commenced for large scale production and was far enough along that manufacture thereof commenced in 1954. On October 28, 1953, after examination of the Vigorelli machine, Singer's Patent Department concluded that so far as any claim might be asserted against the 306 machine based on the Vigorelli machine, Singer probably could prevail over it and that proceeding with the 306 was a normal business risk and recommended that the Company continue its plans to produce and market the 306 machine.

26. Singer thereafter continuously sought information as to the existence of Vigorelli or other patents relating to the cam mechanism contained in the Vigorelli machine, to determine whether such patents would interfere with the manufacture and sale of the Singer machines any place [fol. 2382] in the world, including the United States. By April 22, 1955 Singer had procured copies of two Italian Vigorelli patents and by May 2, 1955 Singer had concluded

that Vigorelli would dominate both the 319 and 401 machines in many European countries and Brazil, and that it had no assurance that others might not do the same in the United States even if Vigorelli did not. It further concluded that with knowledge it expected to obtain through anticipated interference proceedings in the U. S. Patent Office between Singer patent applications relating to the Class 401 and 319 machines and the patent applications of its competitors, including Vigorelli, and Vigorelli's lack of knowledge of Singer's developments, Singer should negotiate directly with Vigorelli as to cross-licensing possibilities, and with others with whom there might be interferences while they were unaware of Singer claims.

27. Singer continued its search for Vigorelli patents. In its search, which search has been instituted in an attempt to destroy or to limit the scope of the Italian Vigorelli patents Nos. 497,557 and 507,862, filed, respectively, in Italy on January 28, 1953 and September 29, 1953, Singer found a United States Patent, No. 2,693,778, which had been issued on November 9, 1954 to Carl Harris. This patent disclosed a sewing machine having a plurality of cams and a single cam follower which could engage any one of the cams to produce ornamental stitches. If this patent were acquired it could be reissued with claims of the type incorporated in the Singer 401, Singer 319, the Vigorelli and the Brother machines, covering a multi-cam zigzag stitch mechanism [fol. 2383] disclosed, but not claimed in such patent. Singer believed that such patent would dominate all such machines because that patent had been filed in the United States on June 9, 1952 prior to any use or patent priority date then known to Singer. Singer hoped to be able to acquire, through the above noted United States re-issue patent application, claims that would be infringed in the United States by the Vigorelli multi-cam structure or, in the alternative, to be thrown into interference with any Vigorelli United States application so that Singer would be placed in a better bargaining position with Vigorelli.

28. Singer purchased the Harris patent on June 10, 1955. On June 16, 1955 it filed a reissue application setting forth (1) the four original claims contained in the Harris patent (Harris Reissue Claims 1 through 4) and (2) eight proposed reissue claims (numbered Application Claims 5 through 12). The four original claims were allowed. The

eight proposed reissue claims were rejected by the Patent Office, which resulted, by amendments, in a series of substitutions and rejections of claims until, on May 16, 1956, Singer substituted Claim 22, a limited version of the original Application Claims 5, 7 and 8 taken in combination. On August 22, 1956 such Claim 22 was placed in interference with the U. S. Gegauf patent application Serial No. 358,377 and subsequently was allowed by the Patent Office as Claim 1 in Gegauf patent No. 2,832,302 issued April 29, 1958. All other substituted claims placed in the reissue application were rejected except that Claims 23, 24 and 25, respectively, were allowed in Harris Reissue Patent No. Re. 24,370 as Reissue Claims 5, 6 and 7.

[fol. 2384] 29. Claim 22 taken from the Harris reissue application, and allowed as Claim 1 in the Gegauf patent, included, *inter alia*, the idea of a series of rotatable cams having a common axis and a single cam follower, shiftable relative to each other lengthwise of the common cam axis, in order to select a particular cam. The Harris Reissue Claims 5, 6 and 7, above referred to, claimed, *inter alia*, specific embodiments of the aforesaid idea, as follows:

(a) Harris Reissue Claim 5 included the limitation, *inter alia*, of a series of rotatable cams having a common axis with each cam being shiftable, lengthwise of the common cam axis, with respect to the cam follower in order to select a particular cam.

(b) Harris Reissue Claim 6 included the limitation, *inter alia*, of a series of rotatable cams having a common axis and a cam follower shiftable relative to each other, lengthwise of the common cam axis, in order to select a particular cam, used in combination with a constantly rotatable cam.

(c) Harris Reissue Claim 7 included the limitation, *inter alia*, of a series of rotatable cams having a common axis and a cam follower shiftable relative to each other, lengthwise of the common cam axis, in order to select a particular cam, used in combination with a particular type of cam follower retracting means.

30. In connection with the acquisition of United States Harris patent, Singer acquired corresponding Harris patents or patent applications in Great Britain, Germany, Canada, France, Japan, Italy, Sweden and Belgium. Singer

[fol. 2385] thereafter sought to determine whether the Harris foreign applications could be amended to insert claims similar to those inserted in the United States reissue application.

31. After acquisition of the Harris patents Singer continued its search for Vigorelli and other patents in foreign countries and sought to determine the scope of patents found.

32. By August 16, 1955 Singer concluded that it was probable that it and Vigorelli would become involved in litigation unless some basis of an agreement could be found which would enable Singer to be free from claims by Vigorelli and which would accord similar immunity to Vigorelli with respect to claims based on Singer patent rights, and that negotiations should be initiated immediately. A letter was written to the head of the Singer organization in Italy stating such to be the fact and asking advice as to the best manner in which to approach the Vigorelli men. After receiving advice from Italy and further correspondence thereon, a conference with Vigorelli was arranged. In the meantime and right up to the date of the conference, Singer continued its search for patents. Such conference was held on November 16 and 17, 1955.

33. In entering into negotiations at this conference Singer had every reason to believe that:

(1) In each of the various countries, including the United States, where both a Harris patent application and a Vigorelli patent application corresponding to either or both of the Vigorelli Italian patents had been filed, the Harris patent application would have a priority date earlier than that of any such Vigorelli [fol. 2386] application; and, if amendments to the Harris application could properly be made, the Harris patent would dominate and if amendments could not properly be made the Vigorelli patent would dominate;

(2) In each of the various countries in which a Vigorelli patent application had been filed and a Harris patent application had not been filed, the Vigorelli patent would dominate;

(3) In each of the various countries in which a Harris patent application had been filed and a Vigorelli patent application had not been filed and in which amendments to the Harris application could properly be made, the Harris patent would dominate;

(4) In the United States the Johnson patent application, covering the idea of taking information from two cams at the same time, had a priority date earlier than the second Italian Vigorelli patent covering the same idea, and that it would appear that the Johnson patent would dominate in the United States;

(5) As between Singer and Vigorelli, the Singer 319 and 401 multi-cam machines would be dominated by Vigorelli patents in various foreign countries and the Vigorelli multi-cam machines would be dominated by Singer patents in the United States and in certain foreign countries,

and Singer knew that:

(6) Vigorelli had been advised by Singer that Singer had on file in the United States and in certain foreign countries patent applications relating to multi-cam zigzag machines and that litigation between Vigorelli and Singer relative thereto was probable, if an agree-[fol. 2387] ment between them was not reached; and Singer had every reason to believe that Vigorelli did not know the character or status of claims inserted in such Singer patent applications.

34. The agreement between Singer and Vigorelli, which is Exhibit S-2, was signed on November 17, 1955.

35. On October 10, 1955, Singer was advised by its Italian representative that Vigorelli was conducting negotiations with Gegauf concerning the latter's prior patent covering a plurality of cams and on October 14 received a confirming letter stating that Gegauf had deposited a patent for a device involving a plurality of cams in a small number of countries some considerable time before the Gegauf machine appeared on the market. This was the first information received by Singer concerning any possible Gegauf patent. Singer had been maintaining a care-

ful watch over Patent Offices throughout the world and it thought that the patent referred to in the cable was probably a Brutsch patent. On October 20, 1955, Singer's representative in Italy cabled that Gegauf had obtained an Italian patent and had a Swiss application with a filing date of May 31, 1952, and that Gegauf was said to have obtained patents in Germany and the United States.

36. Near the end of October 1955 Singer obtained a copy of Gegauf Italian Patent No. 501,172 which related to a multiple-cam machine. This patent disclosed (1) an embodiment of a zigzag stitch machine having a stack of cams and a single cam follower which by sliding lengthwise of the axis of the cams could engage any one of such cams, [fol. 2388] and (2) an embodiment of a zigzag stitch machine having a stack of cams with each cam having its own individual follower. This Italian patent enjoyed an effective priority date in Italy of May 31, 1952 based on a Swiss application priority date of May 31, 1952. Thus it appeared to Singer that patents in many of the principal countries of the world might be allowable to Gegauf which would be infringed by the Singer Class 319 and 401 machines. Singer continued its search for patents affecting multi-cam machines, including any possible other Gegauf patent or patent application. In January 1956, Singer learned, by examination of the United States Patent Office assignment records, that Gegauf had pending in the United States Patent Office an application bearing Serial No. 358,377 which had been executed in Switzerland on May 20, 1953. Singer therefore believed that it was very likely that such United States Gegauf application corresponded to the above noted Swiss application, and that it enjoyed a priority date of May 31, 1952, nine days earlier than the priority date of the Harris patent. It was subsequently determined that such Gegauf United States application had been filed May 29, 1953, and that it did correspond to such Swiss application and had its priority date.

37. Prior to January 19, 1956, the U. S. Patent Office had unofficially advised Singer that the claims in its U. S. Harris reissue patent application, which claims would read on both the Singer and the Gegauf machines, were allowable over the known issued patents. On January 19 Sing-

er's Patent Department pointed out to Singer officials that such being the fact it followed that if such claims [fol. 2389] were contained in a Gegauf U. S. patent application they would be allowable and that with a priority date nine days prior to the filing date of the Harris reissue application it would appear that Gegauf might be entitled to the broad claims. It further advised that it was reasonable to presume that the Gegauf application corresponded to the parent Swiss case, that the U. S. Patent Office would declare an interference for the purpose of determining which of the two parties was entitled to the broad claims. It further pointed out that in such event the Harris reissue application was nevertheless of value to Singer as a means for opposing the final allowance to Gegauf of broad U. S. claims covering multiple-cam mechanism. It accordingly strongly recommended that Singer attempt to work out with Gegauf an agreement along the lines of the Vigorelli-Singer agreement and pointed out that chances of negotiating such an agreement would be greatly enhanced if Singer could approach Gegauf before any patent interference was declared, as prior to any such interference, while Gegauf would have no knowledge as to the effective filing date of the Harris application, Singer would be in a better bargaining position with Gegauf.

38. In December, 1955, Singer heard that Gegauf and Vigorelli had entered into a cross-license agreement, which related to multi-cam patents and which was similar to the Singer-Vigorelli agreement. On February 6, 1956 Singer advised its Italian representative that Singer was very much interested to learn of the Gegauf-Vigorelli agreement as there was every likelihood that Singer would be meeting with Gegauf before long and discuss similar arrangements. [fol. 2390] It asked that an excuse be used for an informal approach to Vigorelli in order to obtain from him information concerning particulars of the Gegauf-Vigorelli agreement, including information as to why Gegauf had dropped its demand for $160,000 for entering into an agreement with Vigorelli, the details of particular patents that Vigorelli had come across which caused Gegauf to drop its demand for such large amount and the names of Gegauf officials with whom Vigorelli had negotiated. Two weeks after asking for this information, Singer explained to its Italian

representative that the idea of a Singer-Gegauf conference in Switzerland was predicated on Singer's arriving at a logical and plausible reason sufficiently interesting to Gegauf to visit him and its ability to establish contacts with the proper persons and further explained that information on the Vigorelli-Gegauf negotiations would enable Singer to determine whether their proposition would be sufficiently interesting to Gegauf.

39. A Singer representative in Italy visited Vigorelli and obtained the requested information. His report, forwarded to Singer on March 2, 1956, stated that Vigorelli had asserted that Gegauf's change from a demand for 100,000,000 lire to consenting to an agreement not contemplating payments of any kind was due to a variety of reasons which could be summarized as: Gegauf's Italian patent was poorly drawn; Gegauf had applied for patent protection in only four countries, whereas Vigorelli had applications or patents in seventeen countries; Vigorelli was aware of certain patents which Gegauf considered dangerous to his various applications. Shortly after receiving this information, Singer instructed its office in Switzerland to make [fol. 2391] arrangements for a conference with Gegauf. Arrangements were made for a conference to begin on April 12, 1956 in Steckborn, Switzerland.

40. In entering into negotiations at this conference Singer knew that:

(1) Gegauf had a patent issued in Switzerland with a priority date nine days before that of the Harris patent, the principal claim of which read directly on the Singer 401 machine;

(2) Gegauf had filed a U. S. application, claims of which Singer presumed would read on the 319 and 401 machines;

(3) Gegauf had an application pending in Germany, which might mature into a patent which would read upon the 319 and 401 machines, and had an Italian patent the validity of which was in question due to the manner in which it was written;

(4) Gegauf was reported to have serious worries as to whether certain prior patents, if called to the atten-

tion of Patent Offices, would limit or invalidate his claim;

(5) Singer had the Harris reissue application in the United States which read on the Gegauf machine and the various Harris patent applications on file in foreign countries, claims of which, if they could be properly amended, would read on the Gegauf machine.

41. The agreement between Singer and Gegauf, which is Exhibit S-3, was signed on April 14, 1956.

42. On or shortly prior to July 15, 1955, Singer received a leaflet issued by Messerschmitt A. G., a corporation of [fol. 2392] the Federal Republic of Germany, which was and is engaged in the manufacture and sale of sewing machines, including zigzag sewing machines, describing a Messerschmitt multicam machine (Par 8(c)). This machine, as the Singer 319 machine, is characterized by having a plurality of cams each provided with its own follower. The Messerschmitt machine is disclosed in Messerschmitt Belgian Patent No. 543,073.

43. Singer had filed its Perla patent application in the United States covering its 319 machine on December 8, 1954, and at the time of the receipt of the Messerschmitt leaflet was tooling and otherwise preparing to manufacture the 319 machine, both in the United States and in Clydebank, Scotland, for distribution throughout the world. On July 19, 1955 Joel Stanford, head of Singer's patent department, wrote to Max Waterman, Vice President of Singer and head of its research and development department, that the patent department assumed that Messerschmitt probably had filed its patent application in Germany covering its machine prior to the end of 1954.

44. Defendant asserts and the Government does not deny that prior to December 8, 1955, Singer had filed in twenty foreign countries applications corresponding to its Perla U. S. application. In the meantime, and continuing thereafter, Singer searched the United States patent assignment records, the British patent application records, and the Italian patent records, and kept a lookout for possible issue or publication in all foreign countries. On February 24, 1956, Singer received advice that no assignment of a Messer-

schmitt United States patent application for a multiple [fol. 2393] cam zigzag machine had been recorded. Up to March 15, 1956, Singer had found no indication of a Messerschmitt patent or patent application.

45. On March 15, 1956, Singer advised its German representative that it was most important for Singer to have the earliest information possible concerning the filing date of a patent application of Messerschmitt for their multicam machine. Singer suggested that some information might be picked up from the patent office in Belgium and requested such German representative to obtain any and all information possible concerning the possible filing by Messerschmitt of patent applications directed to sewing machines having multiple cams, any one of which might be selected to control the vibration of the needle-bar. Singer advised that this had been made more important by a recent communication from the German patent examiner in which he stated that action on Singer's German Perla application S. 46,580 (319 machine) was being held in abeyance because of a prior filed German application which he had before him.

46. On March 19, 1956, Singer requested its German representative to arrange a conference with someone of the responsible management of the Messerschmitt company to discuss measures that Singer and Messerschmitt might take to avoid conflicts between patent applications owned by them relative to multiple cam zigzag machines. On March 27, 1956, Singer's German representative notified Singer that arrangements had been made for a conference on May 3, 1956 with Messerschmitt.

[fol. 2394] 47. In the last week of April, 1956, a few days before the date of the conference with Messerschmitt, Singer discovered a Messerschmitt Belgian patent which had a priority date of November 25, 1954, fourteen days earlier than the filing date of the Perla United States application, but subsequent to the Perla invention date. This indicated to Singer that while if its patent issued in the United States its claims if allowed in their then existing state would dominate the 319 type machine, Messerschmitt patents might issue in many of the principal foreign countries with claims which would dominate the 319 type machine.

48. Singer and Messerschmitt representatives met on May 2, 1956. Messerschmitt refused to enter into any agreement, stating that it wanted a 319 machine to study before making any final decision.

49. By May 1956, Singer was tooling and otherwise preparing to manufacture the 319 machine in Italy for distribution there and elsewhere.

50. On May 25, 1956 a Messerschmitt representative examined a Singer 319 machine. After such examination Messerschmitt advised that it had ascertained that the 319 machine agreed identically in its essential principles with the Messerschmitt machine, on which it had filed patent applications some considerable time before; that an amicable settlement would be in the interest both of the Singer and the Messerschmitt companies because quite a number of other competitors would profit by a dispute which would partly destroy or narrow the claims of either the Singer or the Messerschmitt patents; that patent law questions connected with such ascertainment should be discussed [fol. 2395] between Singer and Messerschmitt patent counsel with the aim of arriving at an amicable settlement; that such counsel should prepare a proposed agreement; and that, patent applications having been filed by Messerschmitt not only in Germany and the United States but also in a number of foreign countries, an agreement, if made, should be a global arrangement.

51. On June 27, 1956, Singer advised its agent in Germany that it agreed that an amicable settlement should be reached, as only competitors would profit from extended and costly litigation between Singer and Messerschmitt; that Messerschmitt's repeated statement that it had patent applications filed in a number of countries left Singer with the impression that Messerschmitt felt that its position was favorable and that no doubt such attitude was fostered by the fact that in May Singer approached Messerschmitt; that Singer believed that within a week or two a conflict between the United States patent applications of Singer and Messerschmitt would develop and that it would be to Singer's advantage if it developed before further talks with Messerschmitt. Singer further advised that no urgency should be displayed in the matter since Singer believed that upon learning from the Patent Office of such

a conflict, Messerschmitt would be stimulated into making further inquiries.

52. On or about July 10, 1956 Singer learned from the United States Patent Office that its Perla application interfered with another patent application and it had no doubt that such interference was with Messerschmitt's application. Singer thereupon advised its agent in Germany that [fol. 2396] it now had good reason to believe that Messerschmitt had received or would receive word that its U. S. patent application would be placed in interference and would understand that such interference was with Singer. Singer requested that Messerschmitt not be advised of such pending interference but that it be told that Singer saw no reason why an amicable settlement could not be reached. Singer added that, although it did not wish to display to Messerschmitt a sense of urgency, Messerschmitt should be asked to suggest a definite date for a meeting and that Singer hoped that Messerschmitt upon learning of the interference would be stimulated into making further inquiries.

53. As a result of such instructions from Singer a conference was arranged but was delayed from time to time until September 24, 1956, such delays being due in part to the desire of Singer to make sure that Messerschmitt was aware of the interference. In the meantime, on September 17, 1956 the United States Patent Office declared an interference between the Perla and the Messerschmitt applications, which interference involved a mechanism by which information is taken from each of a plurality of cams by its own follower.

54. Singer and Messerschmitt's representatives met in Frankfurt on September 24, 1956 and an agreement was reached that patent questions would be settled by cross-licensing. Before signing, however, Messerschmitt wanted to obtain certain releases from its distributor and exclusive licensee in the United States.

[fol. 2397] 55. In November 1956 Singer received word that such release had been signed and that the Messerschmitt agreement would be signed in New York later that month. It subsequently was advised that Messerschmitt would not sign the agreement until it had been assured that Singer entered into some kind of an arrangement

under which Messerschmitt manufactured some sewing machines for Singer.

56. On December 11, 1956 the Singer Patent Department reported to Singer on the infringement status throughout the principal countries of the world of the Singer 319 machine. The Patent Department advised that:

> (1) The 319 machine infringed recently issued Belgian and Italian patents owned by Messerschmitt, and since Messerschmitt had corresponding applications in Germany and Great Britain, the Patent Department presumed that there would soon issue in those countries patents which could be infringed by the 319 machine; (2) Messerschmitt had a corresponding application in the United States which was on that date involved in interference with Singer's Berla application, and Singer expected to prevail in this interference proceeding and receive claims that would cover the 319 machine and be infringed by the Messerschmitt machine; (3) The question before Singer was what action to take in connection with Messerschmitt so that Singer could freely manufacture and market the 319 machine in Germany, Belgium, Italy and Great Britain; (4) It would be to Singer's advantage to have a cross-licensing agreement executed as soon as possible in view of the present or potential infringement of the 319 ma- [fol. 2398] chine in Italy and Great Britain; and (5) Messerschmitt undoubtedly realized that it would lose the United States interference proceeding and that its machine would be subject to an action for infringement by Singer, based on several Singer-owned patents.

The Patent Department recommended that Singer make no further overtures to Messerschmitt lest Messerschmitt interpret such action as eagerness stemming from a weak position by Singer.

57. On December 21, 1956 Singer received word that Messerschmitt was willing to sign the agreement without the condition above mentioned, in Paragraph 55.

58. In March 1957, Singer received from Messerschmitt an executed cross-licensing agreement which Singer deemed deficient because it granted a license from Singer to Messerschmitt to make machines disclosed in Messerschmitt's

"German applications," which applications were not specified, whereas it had been agreed that the license to Messerschmitt from Singer under Singer-owned patents would be to make a particular machine, as disclosed in a specific Messerschmitt application or applications.

59. Arrangements were made for a conference with Messerschmitt on April 16, 1957. At that conference Messerschmitt and Singer reached and signed an agreement. A copy of said agreement is Exhibit S-4.

60. At the April 16, 1957 conference Messerschmitt advised Singer that it would be willing to assign the Messerschmitt United States application to Singer. Singer pre- [fol. 2399] pared and forwarded to Messerschmitt a form of assignment and of a license back, giving Messerschmitt a royalty-free, non-exclusive, non-transferable license under the patent. Messerschmitt objected to some of the wording of the license, particularly the non-transferable provision.

61. To resolve the conflict, a meeting was arranged on May 10, 1957 pursuant to which, on June 4, 1957, Messerschmitt executed an assignment to Singer of Messerschmitt's United States patent application Serial No. 548,481 and Messerschmitt received from Singer an agreement licensing Messerschmitt under the application and any patent issued thereunder. A copy of said assignment is Exhibit S-5. A copy of said agreement is Exhibit S-6.

62. On July 10, 1957 the interference between the Messerschmitt application, Serial No. 548,481, and the Perla application, Serial No. 473,855, was dissolved, since both applications were owned by the defendant. On October 22, 1957 Perla U. S. Patent No. 2,810,360 was issued to defendant.

63. On April 15, 1956 Joel G. Stanford, head of Singer's Patent Department, who had attended the two negotiating conferences relating to the Gegauf license agreement, recorded in a memorandum that he and Max L. Waterman, Vice President of Singer and head of its research and development department, had not approached Gegauf concerning the possible purchase of his patent with a license-back to Gegauf and that it was not believed to be the time to do so, but that Singer could consider the matter after [fol. 2400] it had more information and that if it were later concluded to be advisable, the subject could be raised at such time.

64. On April 20, 1956, a meeting was held in Milan, Italy, between Singer and Vigorelli representatives. Waterman recorded in a memorandum prepared on that date that Vigorelli had arranged for such meeting; that what Vigorelli had on his mind was now that Singer, Gegauf and Vigorelli had arrived at certain agreements that they should thereafter act in concert against others; that this the Singer representatives promptly said to Vigorelli was out of the question and advised him that what appeared to be proper action was for each one to prosecute his own patents and take care of any cases of infringement that might appear; and that this certainly would be Singer's attitude with respect to the patents that it owned.

The memorandum further recorded that Stanford advised Majnoni, Vigorelli's patent attorney, that Stanford and Waterman had decided not to say anything to Gegauf at that time but that they felt that Singer could prosecute any patent that would be issued on the Gegauf application better perhaps than Gegauf could; that Majnoni asked whether Singer would have any objection if word were passed on to Gegauf that Vigorelli was raising this point; and that Stanford replied that Singer would have no objection but that Singer did not wish itself to do this and would not want the suggestion to be made to Gegauf at this time as coming from Singer.

The foregoing was set forth in said memorandum, which is Exhibit S-7.

65. On June 11, 1956, Waterman wrote to Singer's Italian [fol. 2401] representative stating that during the Milan conference the idea had been put forward, Waterman believed by Vigorelli's attorney, that it would be advantageous to all parties if Singer owned the Gegauf U.S. patent application No. 358,377; that at such conference it was thought that it would be best if the suggestion that Gegauf transfer his patent application to Singer come to Gegauf from Vigorelli or some other source than Singer, and that it was left that Vigorelli's patent attorney would convey to Gegauf's patent attorneys in Zurich the suggestion that the transfer be made and, at the same time, set forth its advantages to all parties. Waterman further stated that he was expecting a visit in New York from Gegauf, Jr. in July and that before his arrival Waterman would be interested to know

if Vigorelli's patent attorney had transmitted the suggestion to Gegauf's attorneys and requested Singer's Italian representative to inquire as to whether or not this had been done.

66. The Italian representative, by letter of June 19, 1956, advised Waterman that he had received a communication from Majnoni, copy of which was enclosed. Majnoni had written that he had talked to Gegauf's patent attorneys and that the conversations had developed in such a way that the possibility and advantage of the Gegauf patent application being assigned to Singer could be considered in a definite way, that this had been done in such a way as to prompt an initiative by Gegauf and that Majnoni believed that Gegauf would get in touch with him within the next few days. He added that he had discussed the matter without in any way letting it be known that Singer was aware of the advances to Gegauf.

[fol. 2402] 67. On his return home from a sewing machine convention in Kansas City, Missouri, Gegauf, Jr. and his sister met with Waterman and Stanford at the Singer office in New York in the summer of 1956.

68. On August 22, 1956, an interference was declared between the Harris reissue application No. 516,058 and the Gegauf application No. 358,377.

69. In September, 1956, arrangements were made with Gegauf for Stanford to examine the Gegauf application and for a conference to be held on September 23, 1956 in Landau, Germany. Stanford examined the Gegauf application and confirmed that such application had an earlier priority date than Singer's Harris reissue application and expressed his opinion that a patent issued thereon could contain the claim of the Harris application and dominate the 401 machine.

70. A conference was held in Landau, Germany, on September 23, 1956 attended by Gegauf, Sr., Gegauf, Jr., other directors of the Gegauf Company and Waterman and Stanford. There was discussion of an assignment of the patent application to Singer and of a license back to Gegauf. Gegauf, however, was unwilling to assign for less than $250,000. This sum was many times more than Singer would consider paying for the application and Singer ended negotiations.

71. On March 15, 1957 Singer abandoned the interference set up between Singer's Harris claim and the Gegauf claim. On April 1, 1957 the Patent Office dissolved such interference.

72. On September 9, 1957 Singer's patent department [fol. 2403] proposed that Gegauf be approached again, expressing the feeling that Singer had nothing to lose and much to gain by again seeking to obtain the rights in the Gegauf United States patent application.

73. On September 12, 1957, Waterman advised Gegauf that Singer had just been notified by the United States Patent Office that its Harris reissue application was about to be issued as a patent and that Singer presumed therefore that in a short time a patent would be granted upon Gegauf's application. Waterman further stated that a proper enforcement of such patents might make it necessary to instigate patent suits against each of the importers of infringing machines in the United States, of whom there would perhaps be many, and that he thought that Gegauf would agree that neither one alone could protect himself most effectively. Waterman stated that he was planning to be in Europe within the next two or three weeks and that in view of the recent development of these patent applications it might be in Singer's and Gegauf's mutual interest to resume conversations while he was abroad.

74. On September 23, 1957, Singer's Patent Department prepared two forms of an assignment and license-back agreement for use in the event that Gegauf should be willing to sell to Singer its United States application. The Patent Department advised Waterman that the first form of agreement, providing for a single lump sum payment, had the advantage of giving Singer an irrevocable title to the application and that furthermore, under this agreement, it would not be incumbent upon Singer to deal any further with Gegauf in connection with this general [fol. 2404] subject. The Patent Department advised that the second form of agreement, providing for yearly payments, was advantageous in that Singer could at any time terminate the agreement, revert back to the original Singer-Gegauf license, and be liable to Gegauf for no further yearly payments. In this second form of agreement Singer's Patent Department suggested the use of fixed yearly payments, rather than royalties based upon the number of Singer

machines sold, so as to obviate the necessity for Singer to report to Gegauf the quantities of machines Singer manufactured and or sold under the agreement. Copy of each such form is Exhibit S-8 and Exhibit S-9, respectively.

75. Waterman inquired as to and on September 23, 1957 was advised by the Patent Department that the name of the law firm that represented Singer in patent matters in Switzerland was Messrs. Deriaz, Kirker & Cie.

76. Waterman and Stanford went to Europe and met with the Gegauf people, including Gegauf and Gegauf, Jr., in Zurich on October 16, 1957. There was discussed at that meeting an assignment of Gegauf's United States application with a license back to Gegauf to build and sell his machines just as he was then doing, which in no way would restrict sales by either party. After considerable discussion, the price of $40,000 was thought by Waterman to have been agreed upon, which comprehended the outright purchase by Singer of Gegauf's existing application with all its divisions. Gegauf's and Singer's patent attorneys were to get together to finalize the terms of the agreement in accordance with the discussions. Waterman believed [fol. 2405] that Gegauf would sign such an agreement when his patent attorney, who had not been present, was able to study the suggested draft of the agreement that Stanford had prepared. Waterman felt that some questions might be raised that would have to be clarified through correspondence after his return to New York but, that as of then, it looked as though agreement, if not entirely reached, could be arrived at in a reasonably short time.

77. Subsequent to the conference of October 16, Gegauf, through his attorney, raised three points, that is:

(1) Gegauf had prepared, but not yet filed, a divisional application covering a part of the subject matter of the original application. Gegauf did not want the contemplated agreement to include the divisional application.

(2) Gegauf wanted the agreement to provide that before bringing a legal action against a European company on any patent that should issue on the application, Singer should inform Gegauf and bring such action only after Gegauf had given his consent.

(3) Gegauf suggested a payment of $125,000, if made once and for all or, if not, $25,000 per year, as long as Singer kept the patent, with a minimum duration of the agreement of three years.

By letter of October 25, 1957, Kirker, of the firm of Deriaz, Kirker & Cie, reported the foregoing to Stanford and advised:

1. With respect to item (1): Kirker, after subsequently receiving telephone instructions from Waterman who was then in Frankfort, Germany, had later telephoned [fol. 2406] Gegauf's attorney and told him that Singer was interested only in buying the whole application and that there was no question of its making two separate agreements and two separate payments.

2. With respect to item (2): Kirker had replied to Gegauf's attorney that it would be better to set forth such condition by including the names of the companies which Gegauf had in mind and restricting such condition to such companies. Kirker further reported that apparently (although he was not absolutely sure) there were only three companies involved: Vigorelli, Necchi and Pfaff.

3. With respect to item (3): The conversation with Gegauf's attorney had left Kirker under the impression that an agreement might be obtained on the basis of approximately half the sum mentioned and that Gegauf considered Singer's proposal of $40,000 as minimum, subject to discussion, and similarly that the Gegauf counter-proposal was a maximum, also subject to discussion.

Kirker then advised Stanford that he was awaiting Stanford's instructions.

78. On October 30, 1957, Stanford, in response to Kirker's request, instructed him as follows:

As to Gegauf's first point, Singer had negotiated for and wanted the entire application.

As to the second point, Singer would agree to permit Necchi and Pfaff, in addition to Vigorelli, to sell their respective machines in the United States with-

out fear of infringement suits by Singer on claims allowed on such application.

[fol. 2407] As to the third point, Singer would be willing to pay $62,500 for the outright sale of the application to Singer, and authorized Kirker to go as high as $75,000.

Stanford advised Kirker to contact Gegauf's attorney and make known to him Singer's position.

79. On November 15, 1957, Kirker had an interview in Gegauf's office with Gegauf, Gegauf, Jr., an executive of Bernina, and Gegauf's patent attorney. Gegauf stated his conditions for an assignment of his application to Singer. These conditions were:

(a) The agreement would have to contain a clear undertaking from Singer that it would not manufacture a machine which was a copy of the Gegauf machine;

(b) Gegauf would retain the right to grant a sublicense to one European company, out of a list of such companies, under any patent issued on his application, and

(c) Gegauf would receive the sum of $125,000.

Gegauf explained that while he had no objection to making an assignment of his application by means of which Singer could stop as far as possible Japanese competitors in the United States market, he would do so only upon the conditions which he set forth.

With respect to his price of $125,000, Gegauf said that if he were to grant a license he would get every year many times more than the single payment of $125,000 and added that around him everybody was against the proposal of $125,000 and advised him to ask for a much higher sum. [fol. 2408] Gegauf asked Kirker what sum Singer was willing to offer and stated that he was not prepared to start bargaining and that he would not agree to a sum nearer to Singer's $40,000 offer than to his figure of $125,000. Kirker stated that in view of this he saw no possibility of going further since his instructions from Singer contained a maximum which was nearer to Singer's figure of $40,000 than to Gegauf's figure of $125,000 and stated that

he would ask Singer for specific instructions concerning the sum to be offered.

On November 18, 1957, Kirker reported the foregoing to Stanford and advised that it looked as if an agreement might be reached by offering $80,000 to $90,000 but that Singer might have to go up to $100,000.

80. Upon receiving the foregoing advice from Kirker, Singer decided that Stanford should go to Europe and attempt to conclude the agreement. Purposes, considerations and policies for Stanford's guidance were formulated by Milton C. Lightner, the then President of Singer, with the aid and approval of other executives of the Company. The said memorandum is set forth *in toto*:

> "The main purpose of Mr. Stanford's trip will be to obtain such control of the Gegauf patent applications in the United States as will put us in a position to own and control it in order to get the very best patents and bar import or U. S. production of mechanisms which would violate these patents.
>
> It was believed that agreement had been reached on the basis of a $40,000 payment and with Gegauf carrying out promises that he had made to grant certain licenses, probably to Pfaff and perhaps one or two others.
>
> The proposed agreement not only would have allowed these licenses to unnamed Europeans, but would [Vol. 2409] also have permitted Bernina to have a license under which Bernina machines would come into the U. S.
>
> Evidently, Gegauf has stiffened on price and we may have to pay as much as about three times the original figure. While this may seem high, yet over the years ahead the payment of such a price may well be justified by our having the ability to stop import of very low priced multi cam machines, not only as a result of the help that we would have in the U. S. market in preventing such import, but also because inability to enter the U. S. market may discourage some people from entering the field, and raise unit costs in the case of those who do produce such machines for other markets.

If we do have to pay such a price, it is very desirable to try to get some quid pro quo for the excessive price and this may well lie in this matter of licenses to the unnamed European manufacturers. Accordingly, we should not only endeavor to ascertain who it is that might get a license, but try to get Gegauf to refuse to give these licenses, or if he finds himself unable to do so, then to try to limit the license to a modest number of machines, thus leaving us free to either keep the flow of this type of machine down to the named figure, or (if we prefer) to negotiate for a license fee, which would somewhat compensate us for the nuisance value of such machines or for the high price that we paid for the patent.

While these efforts must be made and while one might expect that for $100,000 or $125,000 Gegauf would give this added protection to us, yet if we are not successful in that endeavor, it would seem as though the ability to exclude this kind of Japanese machine may be worth even this high a price.

If Bernina is to continue to have the right to send machines into the United States and if they consider that right important, they may very well see the wisdom of enabling us to stop other imports from Europe as well as those from Japan.

In the negotiations it may very well be desirable to start with the misunderstanding that has apparently arisen concerning price and, incidentally, to dispose of the question that seems to be in the mind of Gegauf, Jr., that in purchasing the patent, Singer wants to protect itself against claims of infringing Gegauf patents. Gegauf may be little on the defensive on the question price if he admits that $40,000 was the mutually satisfactory figure. Probably he will deny this and characterize the use of the figure as our offer but never agreed to by him. If we have to go up in our figure to come nearer to getting together with his idea, this would quite naturally open the discussion to the question of limitations that he wants to put upon our ownership.

[fol. 2410] Mr. Bruder offered the suggestion that Singer might agree to taking a certain number of

machines and marketing them in the U.S., this suggestion being put forward with the idea that it might help to eliminate licenses to anybody else and also eliminate Bernina imports to anyone other than ourselves. This suggestion, of course, necessitates that we guarantee a certain minimum import which presumably would have to be as much or more than the present Bernina imports. Mr. Bruder indicated a willingness to take as many as perhaps 75,000 over three years—maybe 100,000 over five years would be more interesting to Gegauf. However, it is difficult for us to estimate what would be agreeable because we have no information concerning present imports, but only the understanding that they are rather small (which might mean as little as 5,000 a year).

In determining whether to broach this idea in the course of negotiations, it must be remembered that getting control of the patent is the main objective, with the elimination or curtailment of European import as an important but secondary objective, and that with respect to these objectives, the idea of our purchasing any Bernina machines to be supplied to us under our own chosen trademarks and in our own chosen color (presumably different from Bernina) and possibly with changes in design, for which we would pay, is an idea that should be utilized only if it appears to be likely to help the negotiations. This characterization of the purchase idea as something to be used only if it seems it will *help* on the patent negotiation, is stressed for two reasons: The first is that as soon as one gets into the idea of buying machines, various complications will immediately develop—quantity, price, trademarks, existing arrangements with U.S. distributors, etc., etc., —all of which might very well divert attention from the main objective and perhaps hinder rather than help to get a patent agreement. The second reason is that if we reach an agreement on patent that is reasonably satisfactory to us and we get it put in writing and signed and paid for, we can then report the situation to New York and New York can then say whether in the light of whatever the patent arrangement turns out to be, New York wishes to have discussion opened

on the possibility of importing Bernina machines under our marks; or New York can say to let the operation of the patent agreement as drawn stand and make no overtures at the moment with respect to purchasing machines."

81. Stanford went to Switzerland and with Kirker attended a conference with representatives of Gegauf, including Gegauf, Sr. and Jr., which was held at Steckborn on December 4, 1957. An agreement was reached at such meet- [fol. 2411] ing and executed on December 5, 1957. A copy of such agreement is Exhibit S-10.

82. Singer has instituted the following proceedings:

(1) On May 20, 1958 Singer instituted an action in the United States District Court for the Southern District of New York (No. 133-350) against Brother International Corporation, an importer and distributor of sewing machines manufactured in Japan. The complaint alleged infringement of Gegauf Patent No. 2,832,302, issued on April 29, 1958, and of Harris Reissue Patent No. 24,370, issued on October 8, 1957. On January 5, 1959, Singer instituted another action in said Court (No. 141-237) against Brother International Corporation. The complaint alleged infringement of Johnson Patent No. 2,862,468, issued on December 2, 1958. Said actions are presently pending.

(2) On September 10, 1958 Singer instituted an action in the United States District Court for the Western District of South Carolina (No. 2,429) against Sewing Machine Exchange. The complaint alleged infringement of Gegauf Patent No. 2,832,302 and of Harris Reissue Patent No. 24,370. The action was terminated by a consent judgment enjoining the defendant from selling any machine embodying inventions described and claimed in said patents.

(3) On December 2, 1958 Singer instituted an action in the United States District Court for the Eastern District of South Carolina (No. AC-241) against ACO Appliance Distributing Company. The complaint, as amended, alleged infringement of Gegauf Patent No. 2,832,302, of Harris Reissue Patent No. 24,370 and of Johnson Patent No. 2,862,468. The action was terminated by a consent judgment enjoining

[fol. 2412] the defendant from selling any maching embodying inventions described and claims in said patents.

(4) On January 15, 1959 Singer filed a complaint before the United States Tariff Commission alleging it was the owner of Gegauf Patent No. 2,832,302. This complaint is Exhibit S-11. The complaint prayed that the Tariff Commission recommend to the President that household automatic zigzag sewing machines and parts thereof covered by the claims of said United States Patent No. 2,832,302 be excluded from entry into the United States for the term of said patent. This led to the Tariff Commission investigation No. 17, now pending.

83. The above mentioned actions against Brother International Corporation were based on the sale by Brother of Japanese-made Nippon machine-carried multiple cam zigzag machines sold under the trade names Select-O-Matic 100 and Pacesetter 200. The above mentioned action against Sewing Machine Exchange was based on the sale by Sewing Machine Exchange of a Japanese-made Sanshin machine-carried multiple cam zigzag machine sold under the trade name Universal. The above mentioned action against ACO Appliance Distributing Company was based on the sale by ACO of a Japanese-made Sanshin machine-carried multiple cam zigzag machine sold under the trade name Fleetwood.

84. (1) Except as set forth in paragraph 82 and by patent markings carried on its Class 401 machine, Singer has not brought any action, commenced any proceeding or made any attempt to enforce Gegauf Patent No. 2,832,302.

(2) Except in conjunction with an attempt by Singer [fol. 2413] to enforce Gegauf Patent No. 2,832,302, Singer has not brought any action, commenced any proceeding or made any attempt to enforce Harris Reissue Patent No. 24,370 or Johnson Patent No. 2,862,468.

85. Singer has not brought any action, commenced any proceeding or made any attempt to enforce Gegauf Patent No. 2,877,726 or Perla Patent No. 2,810,360 by suit, notice or threat of suit.

86. On September 12, 1956, Ralph E. Johnson, a member of the Singer Experimental Department in Elizabethport,

New Jersey, completed a design of a new replaceable cam zigzag machine (Par. 8(b)). This design is embodied in the Singer Class 403 machine. The Class 403 machine is provided with a single replaceable cam which is adapted to be tracked by a single cam follower. This machine is also provided with two manually operable levers, one for adjusting the needle position and the other for adjusting the amplitude of zigzag stitches. The first Class 403 machine was produced during the week ending November 29, 1958.

87. Singer is the owner of the following United States patents, copies of which are Exhibits S-12—S-16, each of which discloses a machine carried multiple-cam zigzag sewing mechanism:

(a) Gegauf Patent No. 2,832,302
(b) Harris Patent No. Re. 24,370
(c) Johnson Patent No. 2,862,468
(d) Perla Patent No. 2,810,360
(e) "Second" Gegauf Patent No. 2,877,726

88. In the years 1956, 1957, 1958 and 1959 Singer sold in the United States the number of units of the Singer 306 [fol. 2414] and 403 replaceable cam zigzag machines (Par. 8(b)) and of the Singer 319 and 401 multiple cam machines (Par. 8(c)) herein below set forth:

	1956	1957	1958	1959
306	48,014	19,308	9,927	13,308
403				50,269
319	56,965	31,838	4,199	1,028
401		74,503	147,446	155,422

Manufacture by Singer in the United States of the Singer 319 machine was commenced, and of the the 306 machine was stopped, in 1956. Of the Class 306 machines above set forth the following number thereof had been manufactured in the Singer Clydebank, Scotland plant (where they continue to be manufactured): 1956, 20,707; 1957, 17,708; 1958, 9,927 (all); 1959, 13,308 (all). All other machines above set forth, except 138 of the Class 319 machines, had been manufactured in the United States.

In the years 1958 and 1959 Singer's dollar volume of sales of the 401 machine amounted to $44,233,800 and $46,626,-

600 respectively, approximately 45% of its total gross dollar sales of all models of household sewing machines in the United States for each year.

89. The proceeding before the United States Tariff Commission referred to in paragraph 82(4) was stayed by the Commission upon the commencement of this action by the Government against Singer and is being held in abeyance by it pending the outcome of the action.

90. Exhibit S-17 is a chart listing various United States [fol. 2415] companies which, during the period from January 1957 to December 1959, have engaged in importing, assembling and/or distributing machine carried multiple cam, replaceable cam, and or manual zigzag sewing machines, manufactured in Japan by the manufacturers indicated on said chart. This list does not purport to be a full and complete listing; it merely lists those discovered by research of the defendant's staff. It is not a tabulation or listing of those not engaged in importing the types of machines described; nor a tabulation or listing of types of machines not imported by the importers, assemblers or distributors therein listed.

91. Exhibit S-18 is a chart listing various Japanese manufacturers which, during the period from January 1957 to December 1959, exported to the United States machine carried multiple cam, replaceable cam, and/or manual zigzag sewing machines manufactured by said companies with list of various model or trade names under which such machines are sold. This list does not purport to be a full and complete listing; it merely lists those discovered by research of the defendant's staff. It is not a tabulation or listing of those not engaged in manufacturing the types of machines described; nor a tabulation or listing of types of machines not manufactured by the companies therein listed.

92. Gegauf patent No. 2,832,302 discloses and claims a machine carried multiple cam zigzag machine (Par. 8(c)). Assuming, without the Government conceding, the validity of this patent in order to infringe the Gegauf patent a zigzag machine must incorporate therein a mechanism having, among others, each of the following features or their equivalents:

[fol. 2416] (1) a series of rotary cams having different stitch pattern configurations and mounted about a common axis,

(2) a cam follower mounted for movement radially of the common axis and having a single cam-engaging head with one end engaging and responding to the surface of a cam of the series, and

(3) a manually operable member for withdrawing the cam-engaging head from and radially of a selected cam surface; with

(4) the series of cams and the single cam-engaging head being relatively shiftable lengthwise of the common cam axis after the cam follower has been withdrawn radially from a selected cam thereby to effect a partial or a complete traverse of the series of rotary cams whereby the single cam-engaging head can be manually engaged with one cam after the other in any desired sequence.

93. The Government for purposes of this suit does not dispute the validity of the claims of the Gegauf Patent No. 2,832,302, as issued, and that Harris Patent No. Re 24,370 discloses a machine which is covered by Claim No. 1 of Gegauf Patent No. 2,832,302. The Singer 401 Machine is covered by Gegauf Patent No. 2,832,302. Nothing herein shall preclude the Government from offering evidence (reserving to defendant, however, the right to object on the ground of materiality, competency or relevancy) of agreements made, if any, and circumstances relating thereto, between Singer and the alleged co-conspirators relating to cooperation in the acquiring of grants of patent claims.

[fol. 2417] 94. Gegauf patent No. 2,832,302 does not cover a machine-carried multiple cam zigzag machine (Par. 8(c)), if, to effect a partial or a complete traverse of such machine's series of rotary cams, whereby its single cam-engaging head can be manually engaged with one cam after the other in any desired sequence, the series of rotary cams and the single cam-engaging head are relatively shiftable *radially* rather than lengthwise of the common axis. Examples of such a machine-carried multiple cam zigzag machine are the Feather Universal TViewer Model FSZ120, the Kyokuto Modern Model No. 116, the Kyokuto Vogue Stitch Model D and the Kyokuto Alden's Cam 3-in-1.

Each of the machines mentioned in the preceding paragraph incorporates therein a series of rotary cams which are concentrically arranged about a common axis and a single cam follower which must be shifted back and forth radially rather than lengthwise of the common cam axis in order sequentially to engage the various cams.

95. Gegauf patent No. 2,832,302 does not cover a machine-carried multiple cam zigzag machine (Par. 8(c)), if, to effect a partial or a complete traverse of such machine's series of rotary cams, whereby its single cam-engaging head can be manually engaged with one cam after the other in any desired sequence, the series of rotary cams and the single cam engaging head are relatively shiftable through rotation of the series of cams about their common axis rather than being relatively shiftable lengthwise of the common axis. Examples of such a machine-carried multiple cam zigzag machine are Sankyo Seiki's Consolidated Sewmor Model 770 (New Design), Consolidated Viscount 1959 Model 740 and Consolidated Belair 990 (New Design).

Each of the machines mentioned in the preceding paragraph incorporates therein a single cam follower and a series of cams which are formed as a series of stave-like surfaces about a barrel-shaped cam carrier mounted to turn [fol. 2418] about its longitudinal axis. The barrel-shaped cam carrier must be manually rotated about its longitudinal axis in order sequentially to engage the single cam follower with the various cams.

96. Gegauf patent No. 2,832,302 does not cover a machine-carried multiple cam zigzag machine (Par. 8(c)), if such machine is not provided with a manually operable member for withdrawing the cam-engaging head from and radially of a selected cam surface. An example of such a machine-carried multiple cam zigzag machine is the Borletti New Home Model 1102.

The machine mentioned in the preceding paragraph incorporates therein a series of rotary cams mounted about a common axis and a single cam follower with the series of cams and the cam follower being relatively shiftable lengthwise of the common cam axis under spring pressure to a preselected position without withdrawing the cam follower radially of a cam surface.

97. Gegauf patent No. 2,832,302 does not cover a machine-carried multiple cam-zigzag machine (Par. 8(c)), if such

machine's series of cams is provided with a series of cam-engaging heads of which each cam-engaging head is constrained to engage a respective one of the cams of the series of cams rather than with a single cam-engaging head relatively shiftable lengthwise of the common cam axis. Examples of such a machine-carried multiple cam zigzag are the Turissa Novomatic, the Bell-Messerschmitt Models 502 and 603N, the Pfaff Models 260 and 360 (formerly Models 230 and 332), the Gritzner-Kayser White Automatic Model 666, and the Fukoku Vogue Stitch Model 88.

Each of the machines mentioned in the preceding paragraph incorporates therein a series of rotary cams and a series of cam-engaging heads with each cam-engaging head being constrained to engage only one cam of the series of cams and with means whereby the series of cams and the series of cam-engaging heads may be relatively shifted so that the cams may be sequentially engaged one at a time with a respective one of such cam-engaging heads.

[fol. 2419] 98. Most of the sewing machines, including zigzag machines imported from Japan prior to 1959, consisted of the "head"—that is, the mechanism of the machine. In 1959 Brother and in 1960 Transworld Industries began importing heads to which there had been added in Japan the motor, lights and wiring. To such head there is added in this country, by importers or distributors, carrying cases, cabinets, equipment and appurtenances and, where not already so equipped, motor, wiring and lights, some of which various items may also be imported into this country. The assembled units are distributed principally through (1) department stores and mail-order houses, which order directly from distributors or factories in Japan or from distributors in the United States, and (2) wholesale distributors who import the machines directly or purchase them from importers. The assembled units are sold by distributors to other distributors or to retail outlets, such as department, appliance, furniture and hardware stores located in the various states of the United States. Some of such wholesale distributors, including Brother and New Home, the largest and one of the largest of such distributors, are subsidiaries of Japanese manufacturers, namely, Nippon and Janome, respectively, two of the largest manufacturers in Japan, and some of such wholesale distributors,

including said two distributors, are sole distributors for particular Japanese manufacturers.

99. Most of the sewing machines, including zigzag sewing machines, imported from Europe are complete machines, consisting of head, motor, wiring, lights, equipment and appurtenances. Defendant asserts and plaintiff does not [fol. 2420] deny that where adapted for use with a carrying case they are accompanied by such cases, and where adapted for use in a cabinet the cabinets are acquired and assembled to the machines in the United States. The assembled units are distributed principally through department stores and mail-order houses, which order directly from factories or distributors in Europe or from distributors in the United States, and through wholesale distributors who import the machines directly or purchase them from importers. The assembled units are sold by distributors to other distributors or to retail outlets, such as department, appliance, furniture and hardware stores, located in the various states of the United States. Some of such wholesale distributors are sole distributors for particular European manufacturers.

100. The Vogue Stitch Model No. 88, manufactured in Japan, which does not come within the claims of the Gegauf patent, does come within the claims of the Perla Patent No. 2,810,360 and the Johnson patent No. 2,862,468.

101. On or about January 15, 1959, defendant and Sears Roebuck & Company entered into an agreement, copy of which is Exhibit S-19.

102. On August 22, 1956 an interference was declared between the Harris re-issue application No. 516,058 and the Gegauf application No. 358,377, which interference was dissolved on April 1, 1957.

103. On October 8, 1957 the Harris Reissue Patent, No. 24,370, was issued to the defendant.

[fol. 2421] 104. On December 2, 1957 Gegauf filed a divisional application based upon his original application filed May 29, 1953, Serial No. 358, 377.

105. On December 5, 1959 Gegauf assigned both the original United States application No. 358,377, dated May 29, 1953, and the application divided therefrom to the defendant.

106. On April 29, 1958 Gegauf Patent No. 2,832,302 was issued to the defendant.

107. On March 17, 1959 Gegauf Patent No. 2,877,726, based upon the divisional application, was issued to the defendant.

108. On June 9, 1958 an interference was declared by the United States Patent Office between the Johnson application filed by the defendant on November 29, 1954, Serial No. 471,766, and an application of Vigorelli filed on November 23, 1953, Serial No. 303,760. Both of these applications related to a multi-cam mechanism of a zigzag sewing machine by which information is taken from two cams at the same time.

109. On June 17, 1958 the aforesaid interference was disposed of by the abandonment of it by Vigorelli.

110. To properly and efficiently operate any household sewing machine, including a zigzag stitch machine, it must first be threaded with needle and bobbin threads and three adjustments must be made to insure that the machine will sew with the requisite thread tension, stitch length and work pressure. During the operation the operator must control the speed of the machine and must guide the work material to be stitched, in synchronization with such speed, to insure [fol. 2422] that the stitches will be formed in the desired area of the work material. With each of the three general types of household zigzag sewing machines the operator must in addition make a pre-selection through a control device determining the width of the zigzag stitch to be produced. With a manually operated machine (Par. 8(a)) the zigzag stitch pattern may be varied by the manual manipulation of the stitch width control during machine operation, the results obtained varying with the artistry and skill of the operator. With the replaceable cam (Par. 8(b)) and machine-carried multiple cam (Par. 8(c)) types of machines the zigzag stitch pattern is predetermined by the configuration of the particular cam used, which cam in each instance is selected by the operator, by, in the case of the replaceable cam machine, the manual replacement of one cam with another cam and, in the case of the machine-carried multiple cam machine, by the manual use of a dial, handle or knob to select one of a plurality of machine-carried cams.

111. As used in Singer letters and reports, the following phrases and symbols have the meanings indicated:

(1) "Modified 206 Machine" refers to the 306 machine while in an experimental or development stage.

(2) "Modified 306 Machine" and "Experimental 1040 Machine" refer to the 319 machine while in an experimental or development stage.

(3) "Experimental 282 Machine" refers to the 401 machine while in an experimental or development stage.

[fol. 2423] 112. By June, 1959, Singer had spent over $9,000,000 for research, development, tooling and advertising on its Class 401 machine, of which approximately $4,700,000 was spent for tooling.

113. Exhibit S-20 is a chart listing various United States companies which, during the period from January 1957 to December 1959, have engaged in importing, assembling and/or distributing machine carried multiple cam, replaceable cam, and/or manual zigzag sewing machines, manufactured in Europe by the manufacturers indicated on said chart. This list does not purport to be a full and complete listing; it merely lists those discovered by research of the defendant's staff. It is not a tabulation or listing of those not engaged in importing the types of machines described; nor a tabulation or listing of types of machines not imported by the importers, assemblers or distributors therein listed.

114. Exhibit S-21 is a chart listing various European manufacturers which, during the period from January 1957 to December 1959, exported to the United States machine carried multiple cam, replaceable cam, and or manual zigzag sewing machines manufactured by said companies with list of various model or trade names under which such machines are sold. This list does not purport to be a full and complete listing; it merely lists those discovered by research of the defendant's staff. It is not a tabulation or listing of those not engaged in manufacturing the types of machines described; nor a tabulation or listing of types of machines not manufactured by the companies therein listed.

[fol. 2424] 115. Exhibit S-22 is a chart listing machine carried multiple cam zigzag sewing machines exported to the United States from Europe which come within Gegauf Patent No. 2,832,302, the Harris Patent or the Johnson

Patent and showing the patent or patents which such machines come within.

116. Exhibit S-23 is a chart listing machine carried multiple cam zigzag sewing machines exported to the United States from Europe and Japan which come within Gegauf Patent No. 2,877,726 ("Second" Gegauf) or the Perla Patent and showing the patent or patents which such machines come within.

117. During the years 1958 and 1959, imports of the Lady Kenmore model machine carried multiple cam zigzag sewing machines were, respectively, 250 and 20,925. These machines were manufactured in Western Germany by Gritzner-Kayser A.G. and were imported into the United States by Sears Roebuck & Co.

118. During the years 1957, 1958 and 1959, the total imports of Husqvarna models 21A and 51 machine carried multiple cam zigzag sewing machines were, respectively, 3,250, 3,021 and 6,200.

119. During the years 1957, 1958 and 1959, the total imports of the Phoenix model 283 machine carried multiple cam zigzag sewing machine were, respectively, 410, 83 and 149.

120. During the years 1957, 1958 and 1959, the total imports of the Pfaff models 260 and 360 machine carried multiple cam zigzag sewing machines were, respectively, 9,010, 13,424 and 10,714.

121. During the years 1957, 1958 and 1959, the total imports of the Gegauf Record and Favorit model machine carried multiple cam zigzag sewing machines were, re-
[fol. 2425] spectively, 1,600, 3,405 and 2,150.

122. During the years 1957 and 1958, the total imports of the Vigorelli Robot model machine carried multiple cam zigzag sewing machines were, respectively, 472 and 400. No such machines were imported during 1959.

123. The retail unit price of the head of Singer's Class 401 Machine (Par 8(c)) is $300.00. The retail unit price of the head of Singer's Class 403 Machine (Par. 8(b)) is $240.00.

124. During the year 1957 1400 units of the Gritzner-Kayser White Model 666 were imported. During the year 1959 ten units of the Turissa Novomatic were imported.

125. During the years 1957, 1958 and 1959, the approxi-

mate total imports of the Necchi Supernova replaceable cam zigzag sewing machine were, respectively, 25,423, 17,696 and 16,419.

126. During the years 1957, 1958 and 1959 the approximate total imports of the Elna Supermatic replaceable cam zigzag sewing machine were, respectively, 11,704, 12,002 and 9,976.

127. Exhibit S-24 is a chart listing Singer's United States sales of household sewing machines by style and year, in units sold from 1952 through 1960 and in total dollar volume from 1956 through 1960.

128. Machine carried multiple-cam zigzag sewing machines exported to the United States from Japan during [fol. 2426] the years 1957, 1958 or 1959 which come within Gegauf patent No. 2,832,302 or Harris patent Re. No. 24370 are set forth below:

Manufacturers	Model Names	Gegauf #1 Pat. No. 2,832,302	Harris Reissue (RE 24370)
Banshu	New Home Model 8033[3]	X	X
Sankyo Seiki	Consolidated Belair 990[2] (Old Design)	X	X
	Consolidated Sewmor 770[2] (Old Design)	X	X
Nippon	Select-O-Matic 90	X	X
	Wizard 150	X	X
	Sovereign 170[3]	X	X
	Super Select-O-Matic 100	X	X
	Pacesetter 200[3]	X	X
Sanshin	Universal Two-Selector Handle Model[3]	X	X
	Universal Single Dial Model[4]	X	X
	Universal Design-O-Matic[4]	X	X
Koyo Seiko	Free-Westinghouse 803A[2]	X	

[1] First imported in 1958.
[2] No imports after 1958.
[3] First imported in 1959.
[4] Also sold under the trade names of Fleetwood 958 and Gimbel's Single Dial

129. Machine carried multiple-cam zigzag sewing machines exported to the United States from Japan during the years 1957, 1958 or 1959 which infringed Johnson patent No. 2,862,468 were the Fukoku Vogue Stitch Model 88 (first imported in 1958) and the above set forth Sanshin models and the above set forth Nippon Pacesetter 200 model.

[fol. 2427] 130. The number of Japanese machine carried multiple-cam, replaceable cam and manual zigzag sewing machines imported into the United States in the years 1957, 1958 and 1959 and the number of such multiple cam machines that come within and the number thereof that do not come within Gegauf Patent No. 2,832,302 are set forth in Exhibit S-25. The number of such multiple cam machines which come within Gegauf Patent No. 2,832,302 imported in each such year are set forth by manufacturer and trade name under which sold in Exhibit S-26. The number of such multiple cam machines which do not come within Gegauf Patent No. 2,832,302 imported in each such year are set forth by manufacturer and trade name under which sold in Exhibit S-27.

131. The number of European machine carried multiple-cam and replaceable cam sewing machines imported into the United States in the years 1957, 1958 and 1959 and the number of such multiple cam machines that come within and the number thereof that do not come within Gegauf Patent No. 2,832,302 are set forth in Exhibit S-28. The number of such multiple cam machines which come within Gegauf Patent No. 2,832,302 imported in each such year are set forth by manufacturer and trade name under which sold in Exhibit S-29. The number of such multiple cam machines which do not come within Gegauf Patent No. 2,832,302 imported in each such year are set forth by manufacturer and trade name under which sold in Exhibit S-30.

132. During the years 1957, 1958 and 1959 the total imports of the Borletti New Home Model 1102 machine carried multiple cam zigzag machine were respectively 2,909, 500 and 625.

[fol. 2428] 133. The following persons mentioned in this Statement of Facts or in certain Singer correspondence have the positions or occupations indicated:

Leo Adamson, (Retired) Former General Manager of Singer in Germany.

Barzano and Zanardo, Firm of Italian Patent Attorneys.

C. F. Baumann, Director General of Singer in Italy.

Marshall J. Breen, Patent Counsel, The Singer Manufacturing Company.

Charles F. Bruder, Vice-President, Singer Sewing Machine Company.

Rudolph Busselmeier, German Patent Attorney.

Cicogna, Franco & Co., Italian Patent Attorneys.

Harold R. Crawford, Vice-President, Singer Sewing Machine Company.

Cruikshank & Fairweather, British Patent Attorneys.

W. P. Evans, (Retired) Former Director General of Singer in Italy.

K. Gebhardt, Managing Director of Singer German Factory.

Fritz Gegauf, President, Fritz Gegauf A. G., Bernina Nahmaschinenfabrik.

Fritz Gegauf, Jr., Fritz Gegauf A. G., Bernina.

Robert I. A. Gray, Member of Research Division, The Singer Manufacturing Company.

Robert B. Harmon, Patent Attorney, Washington, D. C.

Peter Kirby, Canadian Patent Attorney.

Donald P. Kircher, President of The Singer Manufacturing Company since January 1, 1958, former Vice-President.

G. E. Kirker, Swiss Patent Attorney, Member of the Firm of Deriaz, Kirker and Cie.

John Z. Kraemer, Economist, The Singer Manufacturing Company.

Tadeusz Krzyzaniak, Member of Research Division, The Singer Manufacturing Company.

Dr. Spirito Lando, Assistant to Director General of Singer in Italy.

Milton C. Lightner, Chairman of Board of Directors since January 1, 1958, former President, The Singer Manufacturing Company.

Mark A. Lollate, Works Manager of Italian Singer Factory.

Marcello Majnoni, Italian Patent Atorney, Member of the Firm of Cicogna, Franco & Cie.

James M. McKinnon, (Deceased) Former General Manager, Singer, Japan.

Donald G. Robbins, Vice-President and Treasurer, The Singer Manufacturing Company.

[fol. 2429] Joel G. Stanford, Chief Patent Counsel, The Singer Manufacturing Company.

Robert W. Stewart, Vice President, The Singer Manufacturing Company.

Michael S. Stryker, Patent Attorney, New York, N. Y.

Max L. Waterman, (Retired November 1, 1960) Former Vice-President, The Singer Manufacturing Company.

Herbert J. Goosman, (Retired) Former Assistant Vice-President, The Singer Manufacturing Company.

Dr. Ernst Wiegand, German Patent Attorney.

Willi, Swiss Patent Attorney, Member of the Firm of E. Blum.

Chester A. Williams, Jr., Patent Counsel, The Singer Manufacturing Company.

Edgar Winteler, (Retired) Former General Manager, Singer, Switzerland.

134. The Singer Class 401 machine (Par. 8(c)) manufactured abroad is manufactured in Monza, Italy and Karlsruhe, Germany factories, which on July 26, 1957 were instructed to begin tooling for production of such machine. Manufacture thereof began in February, 1960. The first such machine was sold in France in May, 1960.

135. Exhibits S-31, S-32, S-33 and S-34 are tabulations with certain English translations superimposed thereon compiled by the Japanese Ministry of International Trade and Industry, showing, under the headings "Semi-Zigzag," "Semi-Automatic," "Full Zigzag" and "Full Automatic," the number of household zigzag sewing machines (head only) approved for export from Japan to the United States during the years 1957, 1958, 1959 and 1960, respectively. As used in the above quoted headings, "zigzag," whether "semi" or "full," refers to manually operated zigzag sewing machines. "Automatic," whether "semi," "simple" or "full," refers to any zigzag sewing machine having a cam (whether multiple cam or replaceable cam) controlled needle. The words "semi," "simple" and "full" refer to the number of positions from which the needle of the machine may operate, "simple" and "full" each indicating an ability to operate from three positions, center or either side, and "semi" indicating an ability to operate from not [fol. 2430] more than two such positions. "Full," as distinguished from "simple," indicates that control of the needle position can be regulated by cam action.

136. During the years 1954, 1955 and 1956, the total imports of Brother model 90 machine-carried multiple cam

zigzag sewing machines were, respectively, 1,800, 9,300 and 8,375 units and, during the year 1956, the total imports of Brother model 200 machine-carried multiple cam zigzag sewing machines were 1,190 units.

137. During the year 1956, the total imports of the Sanshin AZ-5 machine-carried multiple cam zigzag machines were 5,925 units.

138. Exhibits S-36 to S-79 are true copies of genuine original advertisements which respectively appeared in the periodical listed and upon the date set forth opposite the Exhibit number:

S-36	"Behind The Scenes"	April, 1959
S-37	"Behind The Scenes"	February-March, 1959
S-38	"Behind The Scenes"	February-March, 1959
S-39	"Behind The Scenes"	April, 1959
S-40	"Behind The Scenes"	October, 1957
S-41	"Behind The Scenes"	December, 1958
S-42	"Behind The Scenes"	July-August, 1958
S-43	"Behind The Scenes"	January, 1958
S-44	"The Sewing Machine News"	June, 1956
S-45	"The Sewing Machine News"	June, 1956
S-46	"Good Housekeeping"	January, 1960
S-47	"Good Housekeeping"	November, 1957
S-48	"Ladies Home Journal"	May, 1956
S-49	"Ladies Home Journal"	March, 1956
S-50	"McCall's"	December, 1955

[fol. 2431]

S-51	"Butterick Pattern Book"	Spring, 1958
S-52	"Sears, Roebuck and Company Catalog"	Spring, 1960
S-53	"Life"	April 23, 1956
S-54	"Life"	May 21, 1956
S-55	"Life"	March 2, 1956
S-56	"Life"	March 2, 1956
S-57	"Life"	October 22, 1956
S-58	"Life"	January 9, 1956
S-59	"Life"	February 7, 1955
S-60	"Vogue"	September, 1957
S-61	"McCall's Pattern Book"	Fall, 1957
S-62	"McCall's Pattern Book"	January, 1955
S-63	"Good Housekeeping"	April, 1959
S-64	"Parents"	November, 1957
S-65	"Simplicity Pattern Book"	Fall-Winter, 1960
S-66	"Simplicity Pattern Book"	Fall-Winter, 1960
S-67	"Good Housekeeping"	October, 1958
S-68	"Behind The Scenes"	January, 1958
S-69	"Behind The Scenes"	January, 1958
S-70	"McCall's"	Spring, 1961
S-71	"McCall's"	Spring, 1961
S-72	"Behind The Scenes"	March, 1960
S-73	"Good Housekeeping"	December, 1959
S-74	"Good Housekeeping"	June, 1960
S-75	"McCall's Pattern Fashions"	Summer, 1960
S-76	"Behind The Scenes"	November, 1958

S–77	"McCall's"	September, 1955
	"Ladies Home Journal"	October, 1955
	"McCall's Pattern Book"	Winter, 1955

[fol. 2432]

S–78	"Life"	February 7, 1955
	"Look"	February 22, 1955
S–79	"Saturday Evening Post"	April 28, 1959
	"Life"	April 23, 1959
	"Look"	April 28, 1959
	"Ladies Home Journal"	April 28, 1959
	"McCall's"	April 28, 1959
	"Good Housekeeping"	April 21, 1959
	"Parents"	April 24, 1959

Each of the following periodicals at the respective times set forth above with respect to advertisements appearing in said periodical was and now is distributed in the United States to the public:

"Life"
"Look"
"Parents"
"Saturday Evening Post"

Each of the following periodicals at the respective times set forth above with respect to advertisements appearing in said periodical was and now is distributed in the United States to the household sewing machine trade:

"Behind The Scenes"
"The Sewing Machine News"

Each of the following periodicals at the respective times set forth above with respect to advertisements appearing in said periodical was and now is distributed in the United States both to the public and to the household sewing machine trade:

"Good Housekeeping"
"Ladies Home Journal"
"McCall's"
"Butterick Pattern Book"
"Sears, Roebuck and Company Catalog"
"McCall's Pattern Book"
"Simplicity Pattern Book"
"Vogue"
"McCall's Pattern Fashions"

139. Exhibits S-80 to S-85 are true copies of genuine [fol. 2433] original articles or reports which respectively appeared in the periodical listed and upon the date set forth opposite the Exhibit number:

S-80	"Consumers' Research Bulletin"	September, 1952
S-81	"Consumers' Reports"	November, 1953
S-82	"Consumers' Research Bulletin"	November, 1955
S-83	"Consumers' Research Bulletin"	October, 1956
S-84	"Consumers' Reports"	October, 1957
S-85	"Good Housekeeping"	March, 1961

Each of the following periodicals at the respective times set forth above with respect to articles or reports appearing in said periodical was and now is distributed in the United States to the public and to the household sewing machine trade:

"Consumers' Research Bulletin"
"Consumers' Reports"
"Good Housekeeping"

140. Pursuant to the licensing agreement from Singer to Sears, Roebuck & Company, dated January 15, 1959 Sears made royalty payments for the number of units of the Lady Kenmore machine-carried multiple cam zigzag sewing machine manufactured by Gritzner-Kayser, A.G., for the periods of time as listed below:

Period	Units	Royalty Paid
April 29/58—Dec. 31/58	2501	$ 1,000
Jan. 1/59—Mar. 31/59	3746	34,365
April 1/59—June 30/59	4582	40,080
July 1/59—Sept. 30/59	5344	41,450
Oct. 1/59—Dec. 31/59	7253	27,000
Jan. 1/60—Mar. 31/60	5400	24,000
April 1/60—June 30/60	3[illegible]0	14,220
July 1/60—Sept. 30/60	1866	10,215
Oct. 1/60—Dec. 31/60	1362	10,215
Oct. 1/60—Dec. 31/60	1362	

[fol. 2434] 141. Sears, Roebuck & Co. offered for sale a machine-carried multiple-cam zigzag sewing machine in each of its general catalogs for Spring and Summer 1960 and Fall and Winter 1960. In each of said catalogs such machine was offered as its top of the line, highest priced machine. Sears, Roebuck has not included this machine in its Spring-Summer, 1961 general catalog and Sears, Roebuck has no orders pending for such machine and no plans at

present for the placement of orders for such machine. In its Spring and Summer 1961 general catalog Sears, Roebuck & Co. is offering for sale a replaceable cam machine as its top of the line, highest priced machine.

142. Singer's Class 401 multi-cam zigzag sewing machine, with carrying case, sells at retail in the United States at $340. Singer's Class 306 and 403 replaceable cam zigzag sewing machines, with carrying cases, sell at retail in the United States at $202 and $280, respectively. Singer's Class 206 manual zigzag sewing machine, with carrying case, sale of which terminated in 1958, sold at retail in the United States in 1958 at $202.

143. Japanese and European multi-cam, replaceable cam and manual zigzag sewing machines are sold by retail dealers throughout the United States, most of whom determine and fix their own list prices for machines handled by them and the actual prices at which they sell such machines, with the result that the same machine may have different list prices and may be sold at different prices in different shops. The price at which such a machine may be sold is generally determined by bargaining at the dealer's [fol. 2435] shop, and may be sold at the list price or for an amount off the list price. Dealers' list prices for a particular European-made zigzag sewing machine do not differ as much as dealers' list prices for a particular Japanese-made zigzag sewing machine. Generally, a customer can bargain a greater amount off list price for Japanese-made machines than can be bargained off list price for European-made machines. List price includes those prices that a retailer might quote to a customer for the purpose of presenting some price and the actual selling price may be substantially reduced.

144. Retail selling prices of sewing machines depend upon numerous factors, including, among others, quality of machine, machine features, appurtenances and attachments accompanying the machine, availability of service, availability of parts, type and extent of financing arrangements made available, furnishing of lessons or instructions as to the use of the machine, type and effective time of guarantee, cost of manufacture, cost of distribution, location and type of shop at which machine is sold, and promotion and advertising expenditures.

145. A customer's selection of a sewing machine depends upon numerous factors, including, among others, the reputation of the manufacturer or seller of the machine, quality of machine, price, availability of financing arrangements and type and term thereof, availability of service, availability of parts, furnishing of lessons or instructions as to the use of the machine, machine features and appurtenances and attachments accompanying or available for [fol. 2436] use with the machine, type and effective time of guarantee, location and type of shop at which machine is sold, and the customer's psychological approach as reflected in such things as a desire for a machine of a particular quality, i.e., minimum workable, average or best available, susceptibility to persuasion by salesmanship, reaction to the country of origin of a machine and responsiveness to various promotion and advertising techniques.

146. If called to testify employees of Singer would state under oath that they were instructed to obtain the initial price and the lowest price at which zigzag sewing machines listed in Exhibits S-18, S-21 and other zigzag sewing machines could be purchased at retail; and further that they obtained such prices for many of the machines referred to in such Exhibits and for other machines and further that:

They found initial retail prices of Japanese-made multi-cam zigzag sewing machines of various models and styles at various amounts, including a low initial price of approximately $90 and a high initial price of approximately $340, and various intermediate initial prices, including prices of approximately $100, $110, $140, $180, $190, $200, $250 and $290;

They could purchase Japanese-made multi-cam zigzag sewing machines of various models and styles [fol. 2437] at retail at various amounts, including a low price of approximately $90 and a high price of approximately $220, and at various intermediate amounts, including prices of approximately $100, $120, $130, $140, $150, $160, $170, $190, and $200;

They found initial retail prices of European-made multi-cam zigzag sewing machines of various models and styles at various amounts, including a low initial price of approximately $250 and a high initial price of

approximately $400, and various intermediate initial prices, including prices of approximately $280, $340, $360, $380 and $390;

They could purchase European-made multi-cam zigzag sewing machines of various models and styles at retail at various amounts, including a low price of approximately $230 and a high price of approximately $400, and at various intermediate amounts, including prices of approximately $250, $280, $290, $300, $330, $340, $360, $370, and $390;

They found initial retail prices of Japanese-made replaceable cam zigzag sewing machines of various models and styles at various amounts, including a low initial price of approximately $100 and a high initial price of approximately $340, and various intermediate initial prices, including prices of approximately $130, $140, $170, $190, $200, $230, $250, $270, $290 and $330;

They could purchase Japanese-made replaceable cam zigzag sewing machines of various models and styles at retail at various amounts; including a low price of approximately $70 and a high price of approximately [fol. 2438] $215, and at various intermediate amounts, including prices of approximately $80, $90, $100, $110, $120, $130, $140, $150, $160, $170, $180, $190, and $200;

They found initial retail prices of European-made replaceable cam zigzag sewing machines of various models and styles at various amounts, including a low initial price of approximately $185 and a high initial price of approximately $390, and various intermediate initial prices, including prices of approximately $250, $260, $290, $300, $320, $340, $350, $360, $370 and $380;

They could purchase European-made replaceable cam zigzag sewing machines of various models and styles at retail at various amounts, including a low price of approximately $110 (for a slightly used machine) and a high price of approximately $390, and at various intermediate amounts, including prices of approximately $200, $240, $220, $230, $250, $260, $270, $280, $290, $310, $320, $330, $340, $360 and $380;

They found initial retail prices of Japanese-made manual zigzag sewing machines of various models and styles at various amounts, including a low initial price of approximately $90 and a high initial price of approximately $290, and various intermediate initial prices, including prices of approximately $120, $130, $140, $150, $160, $180, $190, $200 and $230;

They could purchase Japanese-made manual zigzag [fol. 2439] sewing machines of various models and styles at retail at various amounts, including a low price of approximately $65 and a high price of approximately $180, and at various intermediate amounts, including prices of approximately $70, $90, $100, $110, $120, $130, $140 and $150;

They found initial retail prices of European-made manual zigzag sewing machines of various models and styles at various amounts, including a low initial price of approximately $180 and a high initial price of approximately $440, and various intermediate initial prices, including prices of approximately $230, $260, $270, $290, $320 and $330;

They could purchase European-made manual zigzag sewing machines of various models and styles at retail at various amounts, including a low price of approximately $145 and a high price of approximately $360, and at various intermediate amounts, including prices of approximately $160, $170, $180, $200, $220, $240, $260 and $290.

Certain models and styles of imported zigzag sewing machines other than those shopped, including multi-cam, replaceable cam and manual machines of Japanese manufacture, may be purchased.

The Government does not concede that the said shoppers reports represent a survey made for any other purpose than to show that purchases could have been made at the prices noted.

147. Exhibit S-86 is a tabulation showing specific zigzag sewing machines, model name and manufacturer thereof, [fol. 2440] and the price at which each of such machines

was actually purchased at retail in single transactions in the United States during the period 1957 to 1960, inclusive.

148. Exhibits S-87 to S-92, inclusive, set forth the model name and retailer of specific zigzag sewing machines shopped by employees of Singer and either the initial price and the price at which the store was willing to sell such machines or the single price specified by the store for such machines, which single price may have been an initial price or a price at which the store was willing to sell such machines, or both. Except where indicated, such Exhibits and the prices set forth in Paragraph 146 do not reflect what trade-in allowance, if any, would have been made on trade-in merchandise or the terms and conditions of any such trade-in allowance, if available. Such Exhibits and the prices set forth in Paragraph 146 were compiled from among shoppers reports, which are Exhibits S-93 to S-431, inclusive, supplemented by telephone conversations with such shoppers solely to identify the type of zigzag sewing machine shopped. The entries on Exhibits S-87 to S-92, inclusive, for the zigzag sewing machines which were identified by such telephone conversations are marked by an asterisk on such Exhibits.

149. Multi-cam [Par. 8(c)], replaceable cam [Par. 8(b)] and manually operated [Par. 8(a)] zigzag sewing machines are not necessarily of corresponding quality, either as compared with zigzag sewing machines of the same type or as compared with zigzag sewing machines of a different type, so that, for example, a relatively high priced manually operated machine may be of superior quality to a relatively low priced multi-cam machine, relatively low priced re-
[fol. 2441] placeable cam machine or relatively low priced manually operated machine. The price of the machine, regardless of type, in part depends upon the attachments or appurtenances which may be or may not be part of such machine and other factors all as set forth in Paragraph 144.

[fols. 3274-3277] IN UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 154-108

[Title omitted]

PLAINTIFF'S STATEMENT OF CONTENTIONS—March 24, 1961

Pursuant to Pre-Trial Order of the Court in the subject case, the Plaintiff submits herewith its contentions.

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[fol. 3278] Prelude to the Formation of the Conspiracy

10. Prior to the formation of the tripartite conspiracy and on or about November 17, 1955 defendant, though confident that it could defeat or severely limit Vigorelli's claims, entered into an agreement with Vigorelli [Exh. S-2], whereby each party undertook to refrain from instituting any opposition, nullity or invalidation proceedings in any country against or otherwise attacking the other's patent applications, for the purpose of pooling their respective patent interests in order to strengthen and broaden their patent position with respect to machine carried multi-cam household sewing machines.

• • • • • • • •

12. Defendant, prior to the formation of the tripartite conspiracy and in December, 1955, was advised by Vigorelli that Vigorelli had executed an agreement with Gegauf which was similar to the one entered into between defendant and Vigorelli, as described in paragraph 10, above; and accordingly, defendant enlisted Vigorelli's assistance in order to obtain a similar agreement with Gegauf.

[fol. 3279] FORMATION AND OPERATION OF THE CONSPIRACY

13. Pursuant to and in effectuation of the combination and conspiracy:

A. The defendant, with the preparatory assistance of Vigorelli, entered into a written agreement with Gegauf dated April 14, 1956 [Exh. S-3] wherein in order to assure, to the greatest possi-

ble extent, the granting to one or both of them of patents covering machine carried multi-cam household sewing machines with the broadest of claims, each agreed, 1) not to take any action in any country, the result of which might restrict the scope of the claims of the other's patents or patent applications; 2) to facilitate the allowance in any country of claims as broad as possible; and 3) not to attack each other's patents. This agreement is itself unlawful for the reasons given in paragraph 14, below. The purpose of this agreement was to assure the granting of broad patents so that such patents could be used in patent attacks upon persons dealing in the said Japanese-made machines in the United States and elsewhere.

• • • • • • •

C. Gegauf, at the suggestion and with the approval of Vigorelli, assigned his United States Patent Applications Nos. 358,377 and 700,079 to the defendant [Exh. S-10] for the purpose of placing within the control of Singer several United States patents relating to machine carried multi-cam household sewing machines (under which the defendant was already free to manufacture and [fol. 3280] sell its built-in cam machines free of any royalty) so that the defendant, for the benefit of itself and the other conspirators, could employ such patents issuing thereon, together with other United States patents or patent applications it owned, to eliminate competition from those United States importers, distributors, and retailers dealing in Japanese-made machine carried multi-cam household sewing machines. Through this assignment, an additional dimension was added to patents which might issue on the applications namely the capacity of being asserted by defendant, as an American assignee, in a proceeding before the United States Tariff Commission for the purpose of obtaining a Presidential Order barring imports into the United

States of said Japanese-made machines. This agreement is itself unlawful for the reasons given in paragraph 17, below.

• • • • • • •

[fol. 3281] 14. A. The Singer-Gegauf agreement of April 14, 1956 [Exh. S-3] described in paragraph 13A above, is unlawful *inter alia*, because:

(1) the restraint effected thereby was the primary purpose of such agreement and was not ancillary to any cross-licensing agreement or any otherwise legitimate agreement; and

[fol. 3282-3284] (2) the degree of restraint effected thereby unreasonably exceeds that degree which may have been necessary to effect any cross-licensing agreement or any otherwise legitimate agreement.

B. That the very nature of the agreement creates such an unreasonable restraint is demonstrated by the fact that it prevents the parties thereto from fully exercising their rights under the laws of the United States and the rules of the United States Patent Office, to wit:

(1) prior to the declaration of any interference between them and prior to the designation of the count(s) of any interference, the parties agreed to preclude themselves from moving to dismiss interferences on the ground that the count(s) involved in the interference was unpatentable;

(2) prior to the declaration of any interference between them and prior to the designation of the count(s) of any interference, the parties agreed to preclude themselves from moving to amend the interferences by substituting, for a count(s) believed to be too broad to support the granting of a patent, a count(s) of narrower scope;

• • • • • • •

[fol. 3288] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 154-108

[Title omitted]

PLAINTIFF'S STATEMENT SETTING FORTH THE SIGNIFICANCE OF DOCUMENTS TO BE OFFERED INTO EVIDENCE—April 14, 1961

Pursuant to the pretrial order of the Court dated April 7, 1961, the plaintiff herewith serves defendant with a set of documents upon which it will rely in presenting its case-in-chief. These documents have been marked as an aid to the Court and the defendant and pursuant to said pretrial order. The plaintiff reserves the right to offer in evidence each of the documents in its entirety.

The documents have been marked in red in accordance with the method outlined below and attached hereto is a statement indicating the particular significance of such documents.

The documents fall into three groups:

1. Documents which are marked "all" on their face. These documents are included in the attached lists and are documents the entire contents of which are significant. Some of these documents have, in addition, been underlined or sidelined in red in order to indicate portions of particular significance;
2. Documents which are marked "out" on their face. These are listed on Appendix A and are documents [fol. 3289] which contain material or evidence which is merely repetitious or cumulative in light of other documents, and which will not be offered in evidence.
3. Documents which are neither marked "all" or "out". These documents are also included in the attached lists and are sidelined or underlined to indicate the

principal portions thereof which the Government deems important.

. . . . . .

Dated: New York, New York, April 14, 1961.

John D. Swartz, Attorney, Department of Justice.

William J. Elkins, Edward F. Corcoran, Les J. Weinstein, James J. Farrell, Jr., Attorneys, Department of Justice.

. . . . . .

[fols. 3290-3301] PLAINTIFF'S STATEMENT SETTING FORTH THE SIGNIFICANCE OF DOCUMENTS TO BE OFFERED INTO EVIDENCE.

V-50-52

To show there was no certainty that broad claims would issue on patents covering machine carried multi-cam machines.

. . . . . .

[fols. 3302-3304] P-203

To show that the Tariff Commission Proceeding was directed primarily at imports from Japan.

G-154; G-155; G-157; G-156; & P-223

To show that the Singer proceeding before the Tariff Commission was for the conspiratorial purpose of barring imports from Japan and that other imports were not the subject of the conspiracy.

. . . . . .

[fol. 3304a-3310] acknowledgment of service (omitted in printing)

[fols. 3311-3322] IN UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 154-108

UNITED STATES OF AMERICA, Plaintiff,

v.

THE SINGER MANUFACTURING COMPANY, Defendant

PLAINTIFF'S TRIAL BRIEF—April 24, 1961

* * * * * * *

[fol. 3323] A written agreement [Exh. S-2] resulted from these negotiations which was executed on November 17, 1955. This agreement provided for cross-licensing on the machines of each other. It also provided that neither would oppose the patents or patent applications of the other and that pending oppositions would be withdrawn or settled "in the spirit of this agreement", thereby facilitating the allowance in all countries of claims as broad as possible. Thus, the arrangement referred to by Lightner, "which would greatly strengthen and broaden the patent situation" of the two, had been accomplished.

* * * * * * *

[fols. 3324-3384] Singer proceeded to arrange for negotiations with Gegauf for the purpose of obtaining an agreement similar to that of "Singer-Vigorelli" and "Vigorelli-Gegauf", which agreement would complete the triangular arrangement.

* * * * * * *

[fol. 1] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civ. 154-108

UNITED STATES OF AMERICA, Plaintiff,

v.

THE SINGER MANUFACTURING COMPANY, Defendant

Transcript of hearing—New York, May 2, 1961, 10:30 A.M.

Before: Hon. Sylvester J. Ryan, District Judge.

APPEARANCES:

Antitrust Division, United States Department of Justice, For the Government: William J. Elkins, Esq., Les J. Weinstein, Esq., Edward F. Corcoran, Esq., and James J. Farrell, Jr., Esq., Attorneys, Department of Justice.

Winthrop, Stimson, Putnam & Roberts, Esqs., Attorneys for Defendant; Allen T. Klots, Esq., Arthur E. Pettit, Esq., Edwin J. Wesely, Esq., Terence H. Benbow, Esq., Neil F. Twomey, Esq., Edward A. Miller, Esq., and Richard J. Riker, Esq., of Counsel.

* * * * * * * *

[fol. 2] OPENING STATEMENT ON BEHALF OF GOVERNMENT BY MR. ELKINS

Mr. Elkins:

* * * * * * * *

Generally speaking, there are two classes of such machines: a straight stitch machine which does not more than [fol. 3-4] sew a straight stitch, and the zigzag machine. The zigzag machines have three principle types: the manually operated machine, the replaceable cam machine and the machine carried multi-cam machine. These machines, as well as sewing a straight stitch are capable of producing a zigzag stitch, a decorative stitch, an ornamental stitch.

The manually operated machine requires on the part of the operator some dexterity and some skill in order to produce such a stitch. With the replaceable cam machine and the machine carried multi-cam machine, that stitch is produced automatically by the use of cams. These cams have varying configurations on their surface, and it is these configurations which determine the stitch pattern.

The intelligence of the cam, as it is called, is taken from the surface of the cam by a cam follower, and the cam follower as it rides on the surfaces of the cam imparts a predetermined motion to the sewing machine needle to produce the stitch.

. . . . . .

[fol. 5-6] It appears, your Honor, that the principal factual dispute that is presented here is as to whether or not any conspiracy or any agreement between the parties other than written agreements existed at all. We, of course, contend that there was a conspiracy and an unlawful conspiracy, and we intend to show the substance of it and its various terms.

The Court: Do you depend for proof of this alleged conspiracy solely upon written documents?

Mr. Elkins: That is true, your Honor.

. . . . . .

[fol. 7-8] Mr. Elkins:

. . . . . .

As a background to the conspiracy, your Honor, which is essential, we will show that at the time of its formation Singer had pending in the United States three patent applications relating to the multi-cam machine. Two of these, the Perla application and the Johnson application, resulted from its own research. There was still another, the third, referred to as the Harris Reissue application.

We will show that at this time Gegauf had pending in the United States one patent application which, however, contained two separate inventions and inventions that were so distinctive that they were required actually to take one out of that application and to make it the subject of a separate

application. So that, in effect, at the time Gegauf had two pending United States applications and Vigorelli, the other co-conspirator that we mentioned, had one.

. . . . . .

[fol. 9-10] The Court: Do I understand, then, that the charge of the government is that it was the object of the conspiracy to assert solely United States patents as affecting foreign imports?

Mr. Elkins: That, your Honor, is true.

. . . . . .

[fol. 11] Mr. Elkins: All right, your Honor.

As well as charging a conspiracy in violation of Sections 1 and 2 of the Sherman Act, that is, a conspiracy to restrain and to monopolize the trade and commerce in the multi-cam machines, we also charge that Singer attempted to monopolize the manufacture, sale and distribution of the multi-cam machine in the United States.

The substance of the conspiracy and the attempt involved these patents and the patent applications and the conspiratorial use of them to limit or to exclude competition from multi-cam machines that were produced in Japan.

We will show, your Honor, that the negotiations between the defendant and Gegauf relating to their respective patent rights included five distinct phases, and by a phase we do [fol. 12] not mean a session, we mean phases which were distinct from each other, and that in all five phases of these negotiations the express motivating influence, the specific purpose of sitting down and negotiating at all in relation to these patent rights was to combine patent strength in order to facilitate and to make possible formidable attacks against persons, United States importers, United States dealers, who were dealing in the Japanese-made machine, and we will show that the negotiations did result in such an agreement.

The principal phase of the conspiracy or facet of the conspiracy was that Gegauf of Switzerland would assign his United States patent applications to Singer so that Singer could use such patents either alone or in conjunction with other patents that Singer owned or expected to

own and control in proceeding against persons who did deal in the Japanese products.

Involved in this assignment were actually, as I stated a moment ago, two patents or two patent applications. Both of them were very basic to the multi-cam machine. One involved a plurality of cams with a single cam follower that was capable of engaging any one of the cams in order to impart a particular motion to the needle to produce a stitch pattern, and this other application related to a plu- [fol. 13] rality of cams, each one of which had its own follower, with a mechanism whereby the particular follower would engage its particular cam and impart the stitch pattern to the needle.

. . . . . .

[fol. 14] The Court: All right. The government does not question the validity of any of these patents that issued in and of themselves and absent this alleged conspiracy, does it?

Mr. Elkins: No, it does not, your Honor.

. . . . . .

[fol. 15] We will also undertake to show that one facet or idea of the conspiracy was that Gegauf would assign his applications to Singer so that Singer then, having ownership of it, could use it before the United States [fols. 16-21] Tariff Commission in a special proceeding, a proceeding that would not have been feasible had Gegauf not assigned his patent applications to Singer.

. . . . . .

[fol. 22] Although that proceeding before the Tariff Commission was on its face directed against all imports of the multi-cam machine covered by that patent, we will show that [fol. 23] actually it was directed against imports from Japan.

. . . . . .

The Court: Was there any other American manufacturer producing this type of machine during this period of time?

Mr. Elkins: No, your Honor.

The Court: Do you charge that that was the result of any unlawful act of Singer's?

Mr. Elkins: We do not, your Honor.

The Court: All right. What happened to the other American machine manufacturers? I recall a number of them.

[fols. 24-25] Mr. Elkins: Many of them, your Honor—and I am tempted to go on but I haven't any evidence on it, as to why they are no longer manufacturers——

The Court: But you do not charge that they were forced out of business by any unlawful act of Singer's, do you?

Mr. Elkins: No, your Honor, we do not.

The Court: All right, that is sufficient.

Mr. Elkins: However, we do charge an attempt by Singer to monopolize the manufacture, sale and distribution of the multi-cam machines in the United States and as to that we will rely upon the conspiracy as we have described it——

. . . . . .

[fols. 26-27] Mr. Elkins:

. . . . . .

Also in relation to the attempt, we will introduce evidence as to patent negotiations between Singer and Messerschmidt, which is a German sewing machine company. Also, your Honor, inasmuch as an attempt——

The Court: What does this Messerschmidt transaction have to do with the charge made about the unlawfully acquired Geganf patents against Japanese importations? What does that have to do with it?

. . . . . .

[fols. 28-29] Mr. Elkins: We do not allege any crime or any offense involving Messerschmidt and Singer.

. . . . . .

[fol. 30] Now in relation to an attempt, your Honor, it is a necessary element to show a specific intent—an intent

which differs as a matter of substantive law from a general intent. We have an intent frequently described by the courts as "They intended the natural consequences of their acts" and so forth.

. . . . . .

Mr. Elkins: All that I wanted to say, your Honor, was that the attempt under the law—an attempt to monopolize [fol. 31] requires a specific intent. We intend to show that specific intent. We intend to do it through documents which relate to the Singer state of mind and the Singer purpose in acquiring patents.

. . . . . .

OPENING STATEMENT ON BEHALF OF DEFENDANT BY MR. PETTIT

Mr. Pettit: I would normally wish to give some of the [fol. 32] background and tell your Honor something about the machines, but I have decided I would rather for the moment go directly to the heart of the plaintiff's case. Theirs, as I understand it—and they have to stand or fall on it—is that Singer acquired patents for the purpose, for the express purpose, for the sole purpose of using them against the Japanese. They made a boycott theory—and unless they can tie it down, not only that they were going to be used against the Japanese but they were not going to be used against the Europeans—and all the way through their documents you will notice in the address to you that it was always directed directly at the Japanese.

Now to clarify our position, I will say that a patent gives only the right to exclude—the government has so stated in its brief. It can exclude others in order to obtain exclusive manufacture to the owner, and it can be used to exclude some and collect royalties from others.

Now Singer acquired the Gegauf No. 1 patent in order to exclude. We do not need to have any debate or argument on that.

We have a manufacturing plant. We had invented and developed the very machine that the Gegauf patent No. 1 [fol. 33] covers—and I will go into the history of that later. But Singer needed it for the purpose of enforcement.

Now the question is, who was to be excluded? As I say, the government's theory was that it was the Japanese and the Japanese only—and if there is a scintilla of evidence that that isn't true—if the answer is that they wanted to exclude everybody, as I understand it, the government's case just falls.

The Court: Not necessarily so. If in the attempt to exclude everybody the Japanese manufacturers were included——

Mr. Pettit: There is no question but that the Japanese were——

The Court: Let me see if I understand the statement that you just made.

Does the defendant concede that it acquired the Gegauf No. 1 United States patent for a purpose of asserting it against importations which infringe?

Mr. Pettit: Absolutely. That we wanted it for that purpose, acquired it for that purpose and have been using it for that purpose.

The Court: Then this question I would direct to both of you. What then is the factual issue presented in this [fol. 34] case? It seems to me to be a question of law.

Mr. Pettit: There is this, your Honor. They have a boycott theory in which they say you make a contract or a purchase which is legal. If you wanted to use it against a particular person, then it becomes illegal. Now they struggle all the way through this case to negate the idea that Singer purchased the patent to use it against everybody. You will notice that they use various techniques and various incidents to show that Singer really didn't want to exclude the Europeans.

[fol. 35] On that issue I think we can just stand on Mr. Lightner's declaration which he prepared when Mr. Stanford was going to Europe in order to try to purchase this patent. He wrote a memorandum for the express purpose of guiding Mr. Stanford and for the express purpose of getting the viewpoint of fellow officers in the company.

The Court: Is this document that you are now quoting from marked in the pre-trial order by any number?

Mr. Pettit: It is set forth fully in the statement of facts and it also has a pre-trial exhibit number, but I don't know the number.

I find that it is paragraph 80 of the mimeograph statement of facts.

Over on page 42, the last full paragraph, Mr. Lightner is discussing a proposition as to whether we should, in order to get this patent, make an arrangement with Gegauf with respect to the purchase of some machines from him. He says:

"In determining whether to broach this idea in the course of negotiations, it must be remembered that getting control of the patent is the main objective, with the elimination or curtailment of European import as an important but secondary objective."

[fol. 36] Now, the government would read out the exclusion of European machines as an important objective. Secondary becomes a word that means nothing. I think that in warfare it is generally conceded that winning the war is the primary objective. Winning a battle may not be the primary objective but it may be very important. Therefore, an indication that something is of secondary importance does not mean that it is not of great importance and that it is not an objective. As a matter of fact, Secondary means next in importance to that that is first in importance. This philosophy shown there, of a desire and even of the importance of excluding the European imports, is shown through these documents in various instances.

The government would negate that by virtue of the fact that in talking of these problems negotiators talked rather normally. I don't see how it is possible, when the Japanese are the main and the primary infringers and the ones that are pouring the infringing machines into the country, that anyone could fail to talk in terms of the facts, and there is no question that Gegauf particularly talked at times about the dangers coming from the imports of the Japanese machines.

[fol. 37] But I submit that you could not expect negotiators to go around talking in terms of saying "It is my hope and expectation that suits will be brought against each and every infringer, including every manufacturer, dealer and seller, whatever the source of his supply and whatever the origin of the country of the infringing machine."

Negotiators just cannot and do not talk in those terms when they are confronted with a primary danger.

Singer wanted to buy this patent, wanted it for its own to use as it saw fit. We will show you that in one of the letters relating to the proposed assignment of the patent it was pointed out that it is much better to buy it, not to pay any royalties, so it would be completely free of any further dealing with Gegauf. We bought it so that we could be completely free and use it in a way that Singer wanted to use it in its best interests.

Singer did use it that way. Singer had no agreements whatever as to licensing or not licensing. It had no agreements whatever as to bringing a suit or not bringing a suit. It did declare that it wanted it. It argued with Gegauf that as a matter of fact it was in Gegauf's interest to do so, but that was an argument as to why Singer wanted it, one of the [fol. 38] reasons that Gegauf should sell it. But it is not any conspiracy. When Singer says that we can enforce this patent and we want to be in a position where we can do it, it is merely talking the facts of life. It could enforce it, it wanted to enforce it, and it needed to enforce it in its own business.

Now, the fact that Gegauf might get some incidental benefit from that seems to me to be quite immaterial. Gegauf knew exactly where he stood, and one of the arguments that he used was that "If you get this and use it in the way that you plan, the first thing that will happen to me is that a lot of Japanese machines will be flooding into Europe." That shows that he was interested in Europe; he was not interested in the United States nearly to the extent that he was in Europe. The government tries to make something out of this, and I don't know why. This, again, is just normal talk.

When Singer wanted to buy the patent, their answer to that was "The Japanese are going to be here anyway," and the net result was that by paying $90,000 and by making no side agreement of any shape, form or description, they acquired this patent for the purpose and with the intention of enforcing it. But it is crystal clear, not only by the [fol. 39] documents that are in the files but by their actions

afterwards, that they wanted it to enforce it against everybody, as any normal owner of a patent would.

They brought an action before the Tariff Commission, an action, by the way, that was never mentioned or thought of before the purchase of this patent. There is not a scintilla of evidence in this whole record that the Tariff Commission proceeding was mentioned at any time, because it was not, and it was not even thought of until about five months after they got the patent. They brought the Tariff Commission action for the purpose of excluding all machines, European as well as others.

The government contends that this is not true for several reasons. They cite that potential adversaries in that proceeding came to Singer and wanted to make some arrangements for licensing and that Singer told them quite normally, I think at least two of them, they could not talk and they were not in a position to talk at this time about any possible licensing. The reason they couldn't talk at this time was that they had to wait to see what happened with the Tariff Commission proceeding before they would know whether they wanted to enter into any agreement with [fol. 40] them. If the Tariff Commission proceeding ended in an adverse decision, then Singer would consider what would be done at that time, and if the Tariff Commission gave an order favorable, there wouldn't have been the slightest possibility of any license to any of these people. And there is a very good reason for that, your Honor.

* * * * * * *

The Court: As I understand it, when Singer acquired, by assignment, the Gegauf United States patents, it granted back a royalty-free license to Gegauf——

Mr. Pettit: That is correct.

The Court: And to—was it Vigorelli?

Mr. Pettit: Vigorelli.

The Court: Did it grant back a royalty-free license to anyone else other than to Gegauf and to Vigorelli?

Mr. Pettit: I forget which one. Whether this one gave [fol. 41] it or the early one I have forgotten, but I believe that it is this agreement that gave Gegauf the right to license two people. In the arrangements in which this was purchased it was either expressly provided there—

yes, it was expressly provided, that's right, that Gegauf could let Pfaff and Vigorelli bring in machines. In other words, Singer could not sue them if Gegauf gave them the right to bring them in. It was not a license to Pfaff and it was not a license to Vigorelli. It was a license to Gegauf under which he could let Pfaff import, if he saw fit to do so.

The Court: He could grant a sub-license.

Mr. Pettit: Yes. The Vigorelli one was utterly unimportant because Vigorelli had a license from us under our cross-license agreement. It didn't make any difference to us whether it was in there or not. Vigorelli had the right whether it was in the agreement or not because we had made the earlier cross-license agreement with Vigorelli which protected him no matter what patents were acquired later. He had a right to sell his machine. So the right to sub-license Vigorelli was meaningless. The right to sub-license Pfaff could have resulted in machines coming in on Gegauf's say-so, not on ours.

The Court: What prompted Singer to give this grant-[fol. 42] back of a royalty-free license with permission to sub-license at the time it acquired the assignment of the basic United States patent.

Mr. Pettit: It had no choice. Gegauf would not sell it to us except on that condition. Gegauf was selling machines, and it is quite logical that Gegauf would want a license because he was selling his machines in the United States and that was simply one of the terms and conditions. Another one of them was that he wanted to be in a position to let Pfaff bring them in if he saw fit.

The answer is he never did give that license. The government's brief says to the contrary. There is an affidavit in the file, right from the very documents on which he is relying, an affidavit signed by Gegauf, that he had never granted any license to Pfaff.

Another thing that they used to try to show that an action which in fact seeks to stop all imports of Europeans was not in fact that is that Mr. Gegauf consented to a change of our agreement. Before the Tariff Commission it was very important that the company not have a lot of licenses outstanding. As you know, the Tariff Commission is not a royalty collection agency, and if it feels that an action

[fol. 43] is being brought where people are not paying royalties, and by someone who merely wants to enforce the patent, they would throw it right out. Its first interest is: are there licenses outstanding or are licenses going to be granted.

For business reasons Singer granted a license to Sears, a company that does over $12,000,000 worth of business a year with it. It wanted to, and even when it granted that license it knew that that grant in itself might imperil its position before the United States Tariff Commission. It was very anxious to eliminate the belief that there would be any further licenses.

Singer, therefore, wrote to Gegauf and asked if he would eliminate the provision about Pfaff. The government says, "Without any further consideration except the helping of this cause, Gegauf consented." Well, now, the fact is that Gegauf held us up, and he did have some other considerations. He said he was ready in principle but he would do so only if we executed an agreement indemnifying him from possible liability on a contract that he made with somebody else some time before. So his consideration was quite definite. He was thinking of himself, as usual and as is right. He gave his consent only on an indemnification agreement from Singer relating to another matter, a license that he [fol. 44] granted and which he said applied to German patents only, and Singer had to give him that indemnification.

So, if anything, it shows complete arm's length dealing, and furthermore it is immaterial in any event. I cannot see why Gegauf's being willing to aid us affects this situation in the slightest.

I would like to call your attention to the machines that are involved in this litigation. The government doesn't mention any of the circumstances or any of the reasons why Singer wanted to buy this Gegauf No. 1 patent. The fact of the matter is that Singer had developed a machine that is called the Singer 401 machine, and it is right up here on this stand. It developed, itself, every single feature in that machine, and it was a brand new machine.

Mr. Elkins says that the company didn't produce this until 1956, but the answer is that long before that, even commencing back in 1953, Singer had committed itself and

its future to this machine. It had done the development work, it had invested money in it, and it was quite clear that it was developing not only that machine but, while that was being developed, it was developing other machines in the zigzag field.

Therefore Singer just was not a newcomer into the field [fol. 45] in 1956 by any means. Singer had already started on the road that required that it be able to sell the 401 machine and the Singer 319 machine.

The Court: Which is the 319 machine? The 401 machine is the second machine there, I see.

Mr. Pettit: The 401 is right here (indicating), and the 319 is this one right here (indicating). The difference between them, your Honor, is the difference explained by Mr. Elkins. He referred to two separate and distinct patents that had to be separated out of the Gegauf application. The idea, the difference between the two, is that in one instance you have a cam follower for each one of the cams in the machine. They both involve the idea of a stack of cams and a follower that can be engaged with any one of that stack of cams and for the purpose of transmitting the information. The 401 had a single follower that could be moved from cam to cam. The 319 has the same stack of cams but with a separate follower for each cam.

Now, those two ideas were in the Gegauf U.S. application. In most countries they would stay in that same application. They are very strict here, and there was also a difficulty of an over-reaching by trying to get a phraseology [fol. 46] that would cover both without covering too much of the field. The net result was that in this country it was separated into two separate patents, but the single idea involved was the stack of cams, a means for taking information from one of those cams to the needle. In each instance you have the same situation; you can have the same number of cams; you can choose your cam and use that information.

The one that Singer was primarily interested in, of course, was the 401. It did insist on the other application coming along with the first application, the one that covered 401. It did that not for the reason that Mr. Elkins thinks. There are many times things behind the scenes that you don't see unless you know the background. The reason

the 319 application, the application covering 319, was wanted was not so much to cover the 319 machine, because in fact the manufacture and sale of the 319 machine in the United States had actually been discontinued. It was a terrific seller abroad and continues to be sold abroad, but in the United States that machine was discontinued in 1957. However, Singer needed the application for a purpose that he would never dream of.

Some nine months before, Singer had made a cross-license agreement with Messerschmidt. Messerschmidt had pat-
[fol. 47] ents abroad in many countries that would cover the 319 machine. The 319 machine abroad was the star machine for the company. Singer gave Messerschmidt, in return for getting the right to sell its 319 machine in all countries abroad where Messerschmidt had patents, and they were numerous, a license under its Perla application which covered the same machine.

In that situation it was quite essential that Singer purchase the Gegauf patent for the simple reason that Gegauf No. 2, covering the 319 machine, would come ahead of Perla and it would have left Gegauf power to exclude Messerschmidt from the United States.

The Court: How did Gegauf No. 2 come ahead of Perla?

Mr. Pettit: Because its priority date was first. Once the patent was issued, when they got into conflict the Perla one was gone and taken out.

The Court: And they covered the same inventions?

Mr. Pettit: Absolutely; read precisely.

The Court: Is it your contention that the Perla 1954 patent covered the Gegauf No. 2 invention?

Mr. Petitt: That's right. The Gegauf No. 2 covered it.

The Court: Covered it and precluded Perla.

[fol. 48] Mr. Pettit: And precluded Perla from using that mechanism and would preclude Messerschmidt from using it.

If you read the correspondence, you will find that Singer never once told Gegauf why they wanted the second application. They used phrases that would cover it up. They said, "Well, we have been bargaining for it all along. It was part of the pie originally. When you cut a pie into several pieces, you have the same thing. We won't settle without it."

Never once was there a phrase in the entire correspondence explaining to Gegauf why Singer insisted on the inclusion of this patent, and the reason was that they felt they didn't dare tell him because, if they told him that their reason for it was to give it to Messerschmidt, they didn't think there would be the slightest chance of their getting it and they might be in considerable difficulty with Messerschmidt.

I don't know what the legal situation was and I don't know what they did, but they didn't want to take any chance on it because Messerschmidt might very well claim that we gave them no consideration at all in giving them a license under Perla when we knew that the Gegauf No. 2 was in the application and might issue and, frankly, we did not [fol. 49] want any possibility of Messerschmidt coming back at us for having given a license under Perla when Perla was going to be subordinate to Gegauf.

The Court: So it is your contention, then, that Singer acquired Gegauf No. 2 to protect the 319 machine which had been manufactured under the Perla invention or the Perla patent.

Mr. Pettit: No, it was to protect Messerschmidt's 319. We had discontinued it in the United States. Singer had actually discontinued the manufacture and sale of the 319 machine.

The Court: Were you manufacturing it abroad?

Mr. Pettit: Oh, yes, and it continued to be.

The Court: But not in the United States?

Mr. Pettit: Not in the United States. But it made it very important that our rights to sell abroad be continued in effect.

The Court: What was the purpose of Singer acquiring Gegauf No. 1?

Mr. Pettit: May I just finish this first, your Honor?

The Court: Yes.

Mr. Pettit: Just one idea on this before I leave it. No [fol. 50] action has ever been brought on Gegauf No. 2, no threat of prosecution, no attempt to enforce it. No notices have been sent out. In other words, I think all of that is confirmatory of the fact that that was not bought to enforce; it was bought to protect our right to sell our machines

abroad by protecting a right we had given to Messerschmidt.

I know what Mr. Elkins would say, of course. He would say we made a license to Sears. Well, that is a story unto itself, and I think I might as well handle it right now.

Sears does business in Canada and in the United States. Singer had the Gegauf No. 1 patent in Canada and in the United States. Sears was willing to pay a license on machines sold in the United States. It, quite obviously, did not want to pay a license on machines sold in Canada.

It took the position, and this you can find by just reading the correspondence, and I think, obviously, for this purpose alone, that the machine it was making and that it wanted to get a license from Singer for was covered by what was then a pending application covering the 319 machine. Singer told them that the machine they were importing did not [fol. 51] violate the 319 machine and would not violate any patent that came from under it but told them quite definitely it violated the Gegauf No. 1, and it took that position throughout the entire negotiations.

What had happened was that, in order to get around Gegauf No. 1, Sears had had injected a perfectly useless piece of mechanism in order to say that it did not violate Gegauf No. 1. It was not functional. It was of no purpose at all. It would just add something in between the follower and the cam.

Mr. Stanford said that that did not in any respect avoid Gegauf No. 1, but Sears insisted that it wanted the license under the Gegauf No. 2 and wanted to say that its machine was not covered by 1, and, because Sears insisted that a license be given to it, a license was drawn covering both patents, and you will find out that to protect itself Sears made a payment on account of past infringements which it wouldn't need to have made because the application on the 319 had not reached the issue stage yet. It owed no royalties for machines that would violate only the 319 patent, but it put in a provision to cover it against the Gegauf No. 1 patent.

Therefore I think it is quite fallacious to say that Singer [fol. 52] used the application in order to license it. It was forced to do so against its will, against its judgment,

and with the flat statement at all times that the machine being covered did not violate Gegauf No. 2.

Now, with that one exception the Gegauf No. 2 patent has never been used, exploited or in any way used to threaten any single person, and that one was done because we had to at their insistence.

You asked why Singer purchased Gegauf No. 1. Singer had developed this machine from top to bottom as a brand new machine. It had already obtained a license, no question about that. It could have sold it without obtaining any further license. It bought the Gegauf No. 1 application for one purpose and one purpose only, to be in the position of the owner of a patent which it could use to exclude machines that were identical with the 401 machine.

It did that, I think quite properly because it invented the machine from top to bottom, and it was beaten only by nine days. It acquired the Harris patent in order to try to get it reissued with claims that would cover the 401, which it did, and then found later, quite some time later, that the [fol. 52a] Gegauf application was ahead of it by nine days. That put it in a position where, if it was going to have exclusivity for its particular machine, it had to have Gegauf No. 1, the patent covering it.

[fol. 53] There is talk about a lot of other patents. Your Honor, the other patents don't amount to a thing. The Gegauf No. 1 patent is all that amounts to anything to the Japanese, it is all that amounts to anything to Singer, and it is all that amounts to anything as far as commerce in this country is concerned. The fundamental concept involved in the 401 is the stack of cams with the single follower. It is so limited that it has to be a stack with the follower moving lengthwise to the common axis of the stack, it has to be retractable, and it has to be retractable by means of a mechanism on the outside such as a dial or handle. Every one of those elements must be present before Gegauf No. 1 is violated, plus many others. We go right down a list of about 17 or 18 elements.

The other patents cover nothing except items that are at most improvements or variations on that same theme, all of which were invented by Singer and all of which were included in the 401 machine. They, if applied, would have

kept out only a total—well, in the year 1957 they wouldn't have kept out a single machine, in the year 1958 all of [fol. 54] them put together wouldn't have kept out more than 249 machines, and in 1959 all of them put together would have kept out only 1485 machines. This is excluding machines that the Gegauf No. 1 patent will cover. If you exclude those, there are only 1734 machines in three years that these other patents would cover, and they are rather freakish. They use a combination that is quite unusual and not often used. In fact, only 685 machines of one type were brought in that violated it.

Therefore, these patents, these other patents, are just camouflage. The battle here, and the sole battle here and the sole battle that the Japanese instigated, is the Gegauf No. 1.

The Harris patent, for instance. The Harris patent reads directly, and you will remember we showed you a chart once, line for line on Gegauf No. 1, and it is only surplusage, very minor items of surplusage, that is left in the Harris patent. They are items that, if we enforce the Harris patent, would not keep out any Japanese machine; it would merely make them change one minor mechanism that we don't use. We had the Harris patent for six months and never brought any action on it.

On the Johnson patent, it has nothing in the world ex- [fol. 55] cept the addition of a second follower, related very much to the idea of the single follower. If you will look in the machine, you will find the stack of cams and it has two followers, one of which can be immobilized. So, in effect, it is a single-follower machine with a second follower added to it. Every other invention that is in the Johnson patent is a minor variation of this very mechanism that he invented and used and we incorporated in the Singer 401 machine. There is not a patent that we have that covers the subject matter that is not used in that machine, and as I say, those outside of the 401 would have covered a total of only 1734 machines that the Gegauf No. 1 wouldn't have handled itself.

The Court: Why did you acquire the Vigorelli patent?

Mr. Pettit: We didn't acquire the Vigorelli patent.

The Court: Didn't you acquire a license or a royalty-free license to use it?

Mr. Pettit: We made a license, cross-license agreement with Vigorelli, it was the first one that was made, back in 1955. That was done because Vigorelli was the first machine [fol. 56] that Singer saw that embodied the idea that was involved in the 401 machine.

In October 1953 Singer saw this Vigorelli machine. It immediately realized that the invention date of Vigorelli had to be ahead of the invention date of Johnson, so much so that when Johnson filed an application he could not put in it a claim for what he had invented because he knew that he could not say what he needed to say in order to support the claim. It was just perfectly apparent, by the sale of the machine in the United States, that the inception date of Vigorelli would be ahead of Singer.

Singer wanted to free the machine, and Singer had Vigorelli beaten in certain countries. Therefore, for the purpose of freeing their machines both in the United States and abroad, Singer entered into the cross-licence agreement with Vigorelli, which was the first one of these cross-license agreements, and that was purely an opening of the markets both for Vigorelli and for Singer.

The same thing happened then for Gegauf. In the negotiations, just before they were going to be concluded with Vigorelli, Singer learned that Gegauf too would have some claims in this field. It didn't know the date but it knew [fol. 57] that there would be some claims there. It had heard that Vigorelli had made an agreement with Gegauf or was engaged in it.

Due to the fact that Singer later asked Vigorelli what patents Vigorelli had cited to Gegauf in order to induce Gegauf to make a cross-license with him, and that was the question and no other question, the Government says we questioned them about the terms of their agreement or various things about the agreement. Vigorelli was asked one question, and without even knowing why it was wanted: what patents if any did you cite to Gegauf? And he told us, and on the basis of his telling us that they brought him in as of that stage and refer all the way through to the assistance of Vigorelli.

That Vigorelli agreement was an absolutely essential agreement if Singer was to be able to sell its 401 machine and not be impeded. Incidentally, I might say that Singer

wrote letters to Europe—France, Germany, Italy, it wrote to Japan—we have these documents among the documents that will be offered—in which it was doing everything it could to find whether there was any means of destroying or limiting these patents, and I think it is perfectly apparent that they found not a single publication and place in the [fol. 58] world that would let them hope or believe that they could limit any patent application in any country that covered a stack of cams, a cam follower that moved lengthwise to the axis of the cams, and it was because they became convinced that these patents, if acquired, could not possibly be beaten and because, if they were acquired, they could stop Singer in various countries of the world, that it frantically—and you will notice the correspondence—went to work to get cross-licenses that would free those markets to it. The idea that there was any conception of a purchase at that time I think becomes ridiculous upon reading the documents.

Now, Gegauf was in exactly the same situation, only the countries were exchanged. In the United States it was apparent to us that Gegauf would be ahead in the United States whereas we would be ahead in foreign countries with the Harris patent. We made a cross-licence agreement with Gegauf, again for the purpose of opening the market and for no other purpose, and, your Honor, I have a chart here that I hope to have a smaller one made of so that you may have it. The time element between these various conferences is quite important. You will notice that in 1955 [fol. 59] the first one was the Harris patent purchase, then the Vigorelli agreement here, each of these being a month, and you will find that there is a considerable time gap between many of these transactions, and not one of these things can be covered, pushed up into a whole single effort. On the contrary, when you come to Gegauf's possible purchase, you will find that there is a gap of over a year between the time that Gegauf absolutely refused to sell his application to Singer and the time that it was taken up a year later, at which time they again failed for a short time and had to go back in December.

So the government would push these all together, make it look as if they all came along, which is far from correct, first close one and then start another one.

Messerschmidt was in exactly the same situation. Messerschmidt had patents all over the world that would have foreclosed the 319 machine. We had a patent, the Perla one, that would beat Messerschmidt in the United States. We exchanged licenses, cross-licenses with Messerschmidt.

You ask what it has to do with it. I really don't know. It [fol. 60] is quite foreign to this. Messerschmidt had three different stages. One was a cross-license, the next one was an assignment of their application in the United States that related to the subject matter of the cross-license. That subject matter, as I have mentioned, was covered by the Perla patent, and we had Messerschmidt beaten.

Therefore there was nothing in that application that was of any use to Singer. All that was in that application that we purchased, the one relating to the United States, was an idea involving a feed mechanism, use of cams to control a feed mechanism. Neither party thought that there was much chance of getting a patent on it, but Messerschmidt itself suggested, not Singer, that it would give the patent application to Singer if Singer would just prosecute it and try to get a patent on it and give it a license. Singer took it, did try to prosecute it, and every claim has been finally rejected by the Patent Office, and those rejections will expire on the 4th of this month.

Therefore, what that application has to do with this, I don't know. It was a feed dog, a mechanism that Singer was interested in. It didn't have it incorporated in any machine at the time, but you don't wait until you get your [fol. 61] mechanism going before you buy your patent unless you have to. They had experimented with it before, they have experimented with it later, and they have even taken a license with reference to one later. But what that has to do with this, I don't know.

The only other thing involved with Messerschmidt is that Singer sought to purchase foreign patents. As I say, Messerschmidt had these foreign patents. Every one of them would affect Singer. Singer sought to purchase them. I have no question in the world but that they sought to purchase them in order to enforce them and protect their sales in the countries where those patents existed. That was all

foreign, had nothing to do with the United States, and I don't see how they have any place in this proceeding.

* * * * * * *

[fol. 62] Mr. Pettit: He refers to the fact that the manual machines require dexterity. I will say that every sewing machine requires dextority. There isn't anyone who can operate a sewing machine, straight stitch or any other kind, who does not have some degree of dexterity and skill with it, and I think there is nothing involved in the point that one little cam will automatically make one little stitch. Using any of these machines, there is still required a tremendous amount of skill and dexterity.

The Court: I suppose he intended to bring to the Court's attention that there was a greater degree of foolprofness, if there is such a term, in the machine.

Mr. Pettit: That is only in relation to one particular stitch [fol. 62a] that is being made. I mean, one stitch would be taken off a cam, that's all. They still require a great deal of skill: how to set it, how to use it, how to run the material through.

[fol. 63] Also he refers to these as separate machines always. I would like to call your attention to the fact that there really isn't such a thing as a separate machine involved in any of these. You have to use language sometimes in order to refer to something, and yet that very language may create a wrong impression.

I have lined up here (indicating) the pieces of mechanism that go into these very sewing machines. Every one of them is fundamentally a sewing machine. Every one of them sews a straight stitch. Every one of them is used 90 per cent of the time or more by a woman who buys one on straight stitch work. These aren't different machines even. They just have different mechanisms inserted in them.

The Court: Well, they have extra attachments—I do not question that—which make them more appealing to the market.

Mr. Pettit: The straight stitch machine has attachments, too. You can get a zigzag attachment for the straight stitch machines which will make it go zigzag.

Here is an attachment that goes with a straight stitching machine (indicating).

Here is a skeleton photograph that just shows portions [fol. 64] in it which are marked in color, which distinguish it from the straight stitch—just the colored portion has to do with the mechanism that makes the zigzag stitch. What you have is a sewing machine with this mechanism in it.

I do not deny that that mechanism performs a certain function. What I am talking about, though, we should not get an idea that we have a different kind of animal here.

The Court: You may have an automobile but instead of getting out the old hand crank and breaking your wrist, you step on a button. You have an electric starter.

Mr. Pettit: Yes.

The Court: But essentially Singer represents these as different machines to the market, doesn't it?

Mr. Pettit: It uses phrases—you cannot help it. It has to say something that represents it as a zigzag machine, but fundamentally every one of these does the straight stitch sewing machine work that is used and done 90 per cent of the time even with these machines.

. . . . . .

[fol. 65] Mr. Pettit:

. . . . . .

I do not think we should get a picture here of the big Singer Sewing Machine Company and a picture of a small Japanese person. If there is a dominant organization that is run by itself in any respect, it is the gigantic cartel controlled from top to bottom—even as to the machines that can be manufactured, what machines may be [fols. 66-67] sent out of the country, what prices they can be sent out at—and even who in the country can manufacture it—there is no greater or more complete cartel in the entire world than the Japanese control over the sewing machine industry, which is the third largest industry in the Japanese empire. It is the Japanese who are dominant throughout the world.

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[fol. 68] UNITED STATES OF AMERICA

vs.

THE SINGER MANUFACTURING COMPANY

New York, May 3, 1961, 10:30 A.M.

Present: William J. Elkins, Esq., Les J. Weinstein, Esq., Edward F. Corcoran, Esq., James J. Farrell, Jr., Esq., Allen T. Klots, Esq., Arthur E. Pettit, Esq., Edwin J. Wesely, Esq., Terence H. Benbow, Esq., Neil F. Twomey, Esq., Edward A. Miller, Esq., Richard J. Riker, Esq.

Mr. Pettit: Your Honor, may I make what I consider just one minor correction in what I said yesterday? I just want to be technically correct. I think the spirit of it is exactly the same, but I did say that the sales of the 319 machine had been discontinued, and what I meant to say and should have said was that it was in the process of being discontinued. In other words, we were not going to sell anything more than those that we had on hand, as shown by the drop from 31,000 in 1957 to approximately 4,000 in 1958, 1,000 [fol. 69] in 1959 and none in 1960. It doesn't alter what I was saying, but it does correct the record as to whether they had actually been discontinued.

The Court: Is that the same machine you said was being marketed abroad?

Mr. Pettit: And is still being marketed abroad.

The Court: And when you speak of its sale being discontinued, you mean that its sale is being discontinued within the territory of the United States?

Mr. Pettit: That is correct, sir.

The Court: All right. But you contemplate continuing to market it abroad and in foreign markets.

Mr. Pettit: And we still are.

The Court: And the marketing in the foreign markets is of foreign manufacture.

. . . . . .

[fol. 70] Mr. Pettit: It is a strange thing to have to correct a hypothetical case, particularly after you had suggested that we not deal in hypothetical cases, but Mr. Elkins

did on page 23; and he said: If the patents had been issued, and had been in effect, they would have excluded the multi-cam machines and the result would have been that Singer would have had a certain percentage of the market. Then he goes on for two or three years.

That is the hypothetical suggestion that overlooks the existing fact that there are non-infringing machines and that as soon as they had a threat against them the non-infringing machines increased by 500 per cent in one year. So, if we are going into a hypothetical question as to what would have happened, we certainly have to take into consideration their demonstrated ability and determination to shift to non-infringing machines, which they can do with ease and have done, and we have a display of them and will have a display of them here.

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[fols. 71-94] INTRODUCTION OF EVIDENCE

The Court: We will now begin the reception of evidence. The Court would like to mark in evidence as a Court exhibit the stipulation and pre-trial orders which cover a statement of stipulated facts numbered numerically 1 to 149, inclusive. We will mark these five pre-trial stipulations and orders dealing with the undisputed facts as one exhibit, and for convenience, so as not to confuse it with the other exhibits, we will call it Court's Exhibit 1.

Is that agreeable, gentlemen?

Mr. Elkins: That is agreeable, your Honor.

Mr. Pettit: That is agreeable.

(Marked Court Exhibit 1 in evidence.)

* * * * * * * * *

[fol. 95] OFFERS IN EVIDENCE OF GOVERNMENT'S EXHIBITS

The Court: All right. Next, now, is the introduction of the plaintiff's documents. Plaintiff has had the Clerk mark, in advance of the trial, each document, and defendant has done the same. We have marked for identification Plaintiff's Exhibits 1 to 198.

Suppose, to assist the Court, this list of plaintiff's exhibits

we mark as Court's Exhibit 2, simply as an aid to the Court and to counsel. Is there any objection to that?

Mr. Elkins: None, your Honor.

Mr. Pettit: No objection.

The Court: Then this is marked Court's Exhibit 2.

(Marked Court's Exhibit 2.)

The Court: Mr. Pettit, the government offers in evidence [fols. 96-100] these exhibits, which have heretofore been marked for identification. Do you have any objection to any of them whatsoever?

Mr. Pettit: Yes, your Honor, I do. Is he just offering them en masse, without making comment upon them individually?

The Court: Not at this time. I will take it that unless you assert an objection to a specific document that you have no objections to it, and the same will apply to the government when we are considering the defendant's exhibits.

* * * * * * *

[fol. 101] Mr. Pettit: The next document is Government's Exhibit 1, a letter dated October 28, 1953. This letter relates only to the 306 machine. The gentlemen at the table are quite aware of the fact that it relates only to the 306 [fol. 102] machine. We have incorporated with them paragraphs 21 and 25 of the statement of facts which show that the Vigorelli machine that was introduced into this country in October, 1953, had two different concepts in it. One of those concepts related to a mechanism that was in the 306 machine. This letter was written with reference to that mechanism and relates only to the 306 machine.

If one reads it and reads it carelessly, one can get the impression that the Singer patent department was suggesting that the idea of a stack of cams and a single follower was not patentable, was not a new idea. That is a misleading document when viewed in that light.

It has no other purpose in this record whatever. Everything about that machine is already established. The very machine itself is in this group or will be if it is not sitting right here. The very machine that was looked at will be here in the room.

A complete description of the machine is contained in the statement of fact. There is no purpose whatever that can be served by that letter other than to mislead some court as to what the defendant meant when it wrote it.

[fols. 103-108] The Court: With the word of caution that you have placed upon the record, may I assure you that the Court will bear your observations in mind when it reads this.

. . . . . .

[fol. 109] The Court: It may be material. I don't know. I am going to overrule your objection, but it will be my observation, when I read this exhibit in the light of my ruling—let us distinctly understand that 206K is the ultimate 306, and that it is a distinct machine, distinctly different from the 401—that I have well in mind.

Your objection is overruled, and you have an exception.

Mr. Pettit: Your Honor, there is a group of documents that come under the hearsay rule—and I will specify them in a moment, but I have no objection to their going in. I would like them to go in with a limitation that when there [fols. 110-113] is a report that somebody has said something, it does not establish the fact.

. . . . . .

[fol. 114] The Court: All right, I will rule on it, and I will indicate to you now that my ruling will be that they will be received in evidence as historical records, as documents of Singer maintained and kept by it in the regular conduct of its business, and that the objection to the reports or hearsay statements will go to the weight to be given to that document when it is being considered—and unless there is other evidence which lends credence to these hearsay state-[fols. 115-156] ments and shows acceptance of their veracity by Singer or by subsequent actions, they will be disregarded.

In the light of that statement by the Court, if you are going to place any specific objection on the record, you may do so.

Mr. Pettit: No, sir. With that limitation I have no objection.

Do you still want specific letters? I would like that to apply generally to any letter that contains hearsay statements.

The Court: That will apply generally. That is the only common sense rule that can be applied.

If Mr. Elkins has any objection, he will state that on the record now.

Mr. Elkins: No, your Honor, I think that you are applying the law, and if any questions come up as they might possibly at the time that we are discussing the document, I think that will be a more appropriate time to get into any intricate details.

. . . . . .

[fols. 157-159] Mr. Pettit:

. . . . . .

We will offer in evidence the exhibits marked S-11, S-17, S-18, S-20 through S-25, S-28, S-31 through S-34, S-36 through S-92, and we call your attention to the fact that we do not offer in evidence—we are perfectly ready to have it go in but we think they are useless——

The Court: Are these exhibits in addition to the 104 which have been listed?

Mr. Pettit: Yes, sir.

The Court: There being no objections to them, they are received in evidence.

. . . . . .

[fol. 160] Offers in Evidence of Defendant's Exhibits

The Court: The next order of procedure as we marked it out will be the offering in evidence of the defendant's documentary exhibits which have been numbered Defendant's Exhibits 1 to 104 for identification. The defendant now offers these in evidence. Is there any objection by the government?

Mr. Pettit: I think I have one or two that I will exclude from offering.

The Court: You are going to withdraw some?

Mr. Pettit: Yes.

The Court: All right. Which ones are you going to withdraw? And if you withdraw them, Mr. Elkins will offer them in evidence.

Mr. Pettit: I have this one series of documents which I thought would be listed, your Honor.

We will offer in evidence all of the exhibits listed contained in this batch (indicating) with the exception of 83, 88 and 98 to 104.

The Court: 83, 88 and 98 to 104.

[fol. 161] Mr. Pettit: 83 and 88 are withdrawn because of the document excluded that the government is offering. Therefore we do not need those two.

The Court: The remaining documents which have been marked as defendant's exhibits for identification are now offered in evidence. You have a list of them, have you, Mr. Elkins?

Mr. Elkins: Yes, your Honor.

The Court: So as to assist the Court, now we will mark the list that the defendant prepared of the documents it offers in evidence, and we will mark that as Court's Exhibit 3.

(Marked Court Exhibit 3.)

The Court: Does the government have any objection to any of the documents now offered in evidence by the defendant?

Mr. Elkins: Yes, your Honor.

The Court: Which documents do you object to?

Mr. Elkins: We object to Defendant's Exhibit 31.

The Court: That is described as a document dated April 15, 1956, called the Stanford memorandum.

Mr. Elkins: That is right, your Honor.

The Court: Stanford is the man who is over in Zurich, isn't he, on the Gegauf matter?

[fol. 162] Mr. Elkins: Yes, your Honor.

The Court: Why don't you want his memorandum in evidence?

Mr. Elkins: Because of the parol evidence rule, your Honor. As your Honor knows, the title of this memorandum is Bernina Agreement, and it relates to an agreement, part of which was a cross-licensing agreement as between Singer and Gegauf.

The Court: Who is Bernina? Is that Gegauf?

Mr. Elkins: Another name for Gegauf, your Honor. The contract in question is in. Its terms are clear. Its language is clear. This memorandum purports to change the clear meaning of the contract and its terms as they are set forth in an exhibit which is before your Honor, namely the contract itself.

The Court: What was Stanford's position in Singer?

Mr. Elkins: The head of the Singer Patent Department.

Mr. Pettit: Yes, sir.

The Court: Objection overruled. It will be received in evidence as being some indication of Singer's contemporaneous interpretation of the agreement. You can have [fols. 163-167] an exception to my ruling.

Next objection.

Mr. Elkins: Did I make my point clear?

The Court: I think you did, sir.

Mr. Elkins: That this contradicts the written agreement?

The Court: I think I made myself as clear as you did. I hope I did. You have an exception.

Mr. Elkins: All right, your Honor.

The Court: It is not taken in contradiction, Mr. Elkins. It is taken as a recording of Singer's interpretation, be it right or wrong.

* * * * * * *

[fols. 168-170a] The Court: Have you any objection to any more of the defendant's exhibits as offered in evidence?

Mr. Elkins: No, your Honor. That is everything.

The Court: Then they are received in evidence.

* * * * * * *

[fol. 171] The Court: Well, tomorrow at 10:30 will be all right. I am as busy upstairs as I can be with administrative work until twenty after 10 every day.

Let us see where we are heading here. We are going to have the comments of the plaintiff as to the significance of the government's documents?

Mr. Elkins: Yes, your Honor.

The Court: Then we will have the comments of the defendants as to the government's documents.

Next will be the comments of the defendants as to the significance of the defendant's documents, and then the government's comments.

• • • • • • •

[fol. 172] The Court: And oral proof, if any, on Friday.

I do not want any of you to feel under pressure because I personally regard this as one of the vital parts of the case. I want to see where both of you feel these various documents are important.

Mr. Pettit: Will that contemplate starting at the beginning and going through, document by document, your Honor?

[fols. 173-175] The Court: If you want to do it that way, you may do that. It has been done in other cases before, me and it is very satisfactory. If not, you can handle it any way you want.

• • • • • • •

[fols. 176-180] New York, May 4, 1961, 10:30 A.M.

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[fol. 181] DISCUSSION OF SIGNIFICANCE OF GOVERNMENT'S EXHIBITS

Mr. Elkins: Your Honor, in discussing the government's exhibits we will, from time to time, direct your Honor's attention not only to one document but, as it happens, we might have to backtrack from a particular document into several others. It is axiomatic, of course, that each document throws light upon another document, and, of course, it is a simple proposition of the law that the evidence must be viewed collectively, and we think that is particularly true of documentary evidence, that it must be viewed as a whole in order to give a complete and accurate picture.

The first document, your Honor, is Exhibit No. 1. Opposing counsel yesterday referred to this document particularly as one which might be misleading. I think, if we spend an extra 30 seconds on it, we might be able to remove his apprehensions.

To put this document in its proper place, your Honor, I

would like to explain first that, as shown by the document, sometime in October 1953 Singer became acquainted with a new Vigorelli model zigzag machine. That particular machine involved two novel ideas as far as Singer was con-
[fol. 182] cerned. The machine is a machine-carried multi-cam machine and it has the additional feature of a nest of cams which may be removed from the machine. So, if the stack has seven or eight cams, the operator may use those, and by using a dial or a knob on the exterior of the machine, change from one stitch pattern to another, and if the operator likes, she may take the stack of cams out, add new cams and insert it again. Therefore it is removable.

So the two ideas presented were: one relating to a built-in or a machine-carried cam machine, the other idea relating to a removable cam machine, and as I understand opposing counsel, he wants to make sure that this document is construed as relating to removable cam machines, and as far as Singer's machine is concerned, we agree.

We could direct your Honor's attention to page 6 of this document, the first full paragraph. There Singer, after discussing the Vigorelli machine and the possibility of it having filed applications to cover it, states in this letter by Mr. Stanford to a vice president of Singer, which is dated October 28, 1953:

> "However, there is no certainty that Vigorelli has
> [fol. 183] filed applications in countries other than Italy. And furthermore, even if such applications have been filed, there is no certainty that the claims contained in such applications have been drawn broad enough to be infringed by our 206-K mechanism.
>
> "In view of this situation and in view of the fact that it is problematical as to whether the common subject matter of the Vigorelli and 206-K machines can be validly covered by United States or foreign patents, we believe that the danger involved, if this company were to manufacture and sell the new 206-K machine, could be classified at the present moment as a usual business risk. In this connection we feel that, if patents of the United States, Great Britain and Germany were to issue to Vigorelli containing claims covering the subject matter common to the two machines, we could meet

such claims with prior art patents which would place the validity of the claims in question. However, we have no complete defense and we cannot say with certainty that we can overcome such claims by opposition [fol. 184] or invalidation proceedings, but we do feel that as a case of last resort we could cast doubt on the validity of any claims that Vigorelli may obtain and thus obtain a reasonable agreement with them."

And if I may direct your Honor's attention to page 9 wherein it is stated at the top of the page:

"Assuming Vigorelli obtains claims which are infringed by the new Class 206-K machine, we feel that in the United States, Great Britain and Germany we would have a fair chance of overcoming such claims by citations of prior art in opposition and interference proceedings or of obtaining an undertaking from Vigorelli not to seek to enforce the claims against Singer."

And the purpose of offering this document, your Honor, is to show the predisposition of Singer to enter into agreements with competing patent applicants in situations where, as it appears here, and I am quoting from the document, "we could cast doubt on the validity of any claims that Vigorelli may obtain."

The Court: That is a predisposition, isn't it, that is shared in by every sensible manufacturer in business?

[fol. 185] Mr. Elkins: We are pointing out solely with this document, your Honor——

The Court: I mean that is a universal disposition. If you have an article and you think there might be a claim against it and you are not confident of success, you try to negotiate with business prudence to arrange to settle the patent dispute, don't you?

Mr. Elkins: That, I suppose, is a common procedure, your Honor.

The Court: It is the universal procedure by any prudent business management. All right.

Excuse me for interrupting.

Mr. Elkins: No, your Honor, I don't mind your interruption at all, and I won't dwell further on that document.

Other documents will throw additional light on the same subject.

The Court: All right.

Mr. Elkins: Exhibit No. 2, your Honor, on the last page. This is a letter dated April 26, 1955, some two years after the previous exhibit from which we quoted, and it is from the Singer Patent Department, to Mr. Waterman, a vice president of Singer, whose duties include the Patent Department, or he is over the Patent Department in Singer. [fol. 186] This document merely introduces the existence of a Johnson application, and I will quote from the document. It is still speaking of the Vigorelli machine, and they say:

> "However, this company's United States patent application of Johnson, Serial No. 471,766, filed November 29, 1954 covering the experimental 282 machines" (parenthetically, that is the Singer machine 401) "contains claims which, if allowed, might be infringed in the United States by the later model Vigorelli zigzag automatic machine. At the present moment we cannot predict whether the broad claims of this United States application will be finally allowed, for there is much patent activity in the field of zigzag stitch ornamental machines."

[fol. 187] The reasons for referring to that, your Honor, is to provide some background as to the advent of the Singer-Johnson application, and the fact that it might be of some value in relation to the Vigorelli machine, and that Singer is not certain at this time whether the claims in its Johnson application would be allowed.

Exhibit No. 3, your Honor, is dated June 16, 1955, and it is a memorandum prepared by Mr. Williams of the Singer Patent Department, and it relates to the Singer acquisition of the Harris patent. That patent discloses but it did not claim a machine-carried multi-cam machine, and this document states that Singer acquired it in order to apply for a reissuance of it. This document says hardly anything more than I have said, your Honor. However, since it is one of the first documents and does contain some general,

non-controversial background material, I would like to read from it. The letter begins:

> "In an attempt to destroy or to limit the scope of the Italian Vigorelli patents Nos. 497,557 and 507,862, filed respectively in Italy on Jan. 28, 1953 and Sept. 29, 1953, we conducted a patent investigation which developed [fol. 188] U.S. Harris patent No. 2,693,778 disclosing a Class 107W type sewing machine modified by the addition thereto of a plurality of rotary cams and means for selectivity connecting the needle-bar with any of these cams so as to produce a predetermined pattern of zigzag stitching. The claims of the Harris patent, however, do not relate specifically to the multi-cam mechanism but rather to the specific form of an eccentric adjusting mechanism which is incorporated in the Harris machine. These claims do not dominate our Class 282 or Experimental 1040 machines"——

Parenthetically there, your Honor, Class 282 is the Singer 401 machine, and the Experimental 1040 is the Singer 319 machine.

The memorandum continues:

> "nor any of the existing family-type automatic zigzag machines made and sold by our competitors. However, it would appear that the Harris patent disclosure could support claims which broadly call for a multi-cam mechanism and cam selector means in a manner such as to read upon many of the existing types of automatic multi-cam zigzag machines including our Class 282 and Experimental 1040 machines as well as the Vigorelli [fol. 189] and Brother machines."

Parenthetically there, the "Brother machines" is the one manufactured in Japan.

> "Since the U.S. Harris patent has been issued for less than two years, it might be possible to reissue such patent and acquire broadened claims that would cover the multi-cam mechanism. If it is not ultimately possible to obtain such broadened claims the filing of a

reissue patent application might precipitate a patent interference proceeding between the Harris reissue application and any other pending U.S. patent application containing claims of like scope. Since the Harris patent application was filed in the United States Patent Office on June 9, 1952, a date prior to, for example, the earliest filing date of any of the known Vigorelli zigzag patent applications, it would appear that the Harris patent application would be awarded the claims involved in the interference on the grounds of its prior filing date. Further, even if such an interference were not declared between Harris and any of the U.S. pending patent applications containing similar multi-cam mechanisms for the reason that the Patent Office does not consider [fols. 190-199] claims of such scope to be patentable, the prosecution of such claims before the Patent Office and the final rejection thereof would be a good indication that no one else would be awarded claims of such scope by the United States Patent Office.

Thus, it appeared highly desirable for Singer to acquire all rights in the United States Harris patent, particularly in view of the patent situation surrounding the Class 282 and Experimental 1040 machines."

Thus, your Honor, at the moment, which is June 16, 1955, Singer had pending in the United States Patent Office three applications: the Johnson application, previously referred to, the Harris reissue application, and one other application that we have not mentioned, which was filed in 1954, the so-called Perla application.

. . . . . .

[fols. 200-202] As a result of the negotiations between Singer and Vigorelli, an agreement, which is the next exhibit, Government's Exhibit 11, resulted.

. . . . . .

[fol. 203] Exhibit No. 15, your Honor, is a letter dated
[fol. 204] December 10, 1955 from Singer-Italy to Mr.

Waterman, and we direct your Honor's attention to the second paragraph thereof in which it is stated:

> "During a friendly conversation with Mr. Vigorelli the following subjects were mentioned:
>
> "Vigorelli has reached an agreement with Bernina on similar lines to the one made with us which commits both companies not to raise opposition to the patents concerning multi-cam zigzag machines."

The Court: You are skipping that next sentence.

Mr. Elkins. I am sorry, your Honor!

The Court: I say you are skipping that next sentence. It wouldn't seem to be that they are conspirators, yet at this stage you claim that the conspiracy was afoot, don't you.

Mr. Elkins: No, your Honor. It is headed towards the conspiracy at this stage, and I would gladly put in the sentence referred to.

The Court: Very well. At this stage it appears that Singer and Vigorelli were not letting Gegauf in on anything. This is a private deal between Singer and Gegauf.

[fol. 205] Mr. Elkins: If your Honor please, it was just——

The Court: "In accordance with our agreement, Mr. Vigorelli made no mention to the Bernina people of his arrangement with the Singer Company."

Mr. Elkins: Yes, your Honor.

The Court: It doesn't sound to me like dealings of fellow conspirators, does it?

Mr. Elkins: The document from which you are now quoting, your Honor, is——

The Court: Exhibit 15, the one that you just read from.

Mr. Elkins: That's right.

The Court: I read the next sentence, where you stopped.

Mr. Elkins: Yes. It is dated December 10, 1955, and previous documents indicated the first time that Singer received any indication at all involving Gegauf and the fact that Gegauf had any patent applications involving the so-called built-in cam machine. It was during these negotiations, your Honor, that Singer learned for the first time of the Gegauf patent application, and at this time——

The Court: That was October 10th.

[fol. 206] Mr. Elkins: That's right, your Honor.

The Court: 1955.

Mr. Elkins: That's right, your Honor, and its knowledge of a United States patent application——

The Court: This letter, Exhibit 15, is two months later.

Mr. Elkins: That's right, your Honor.

The Court: All right.

Mr. Elkins: And if we may add, we have not referred at all, and there has been no reason as yet to refer to any negotiations that occurred between Singer and Gegauf. At this time Singer has not seen Gegauf. All that they know now is that Gegauf does have some applications which relate to the field. They also know now that there are negotiations going on and have been going on between Vigorelli and Gegauf, both of which have pending applications relative to this field, and that it ultimately resulted in an agreement, as stated here, which commits both companies "not to raise opposition to the patents concerning multicam zigzag machines."

Your Honor is right: Singer has not yet seen Gegauf. Gegauf is not yet in the picture, your Honor, except as he has negotiated and has entered into an agreement with Vigo-

[fol. 207] relli and except for the fact that Singer does have knowledge as of October 1955 of Gegauf applications. The Singer and Vigorelli agreement is dated, I believe, November 14, 1955.

As of January 19, 1956, and that is the date of the next exhibit, Government's Exhibit No. 16, from the Singer Patent Department to Mr. Waterman, this reflects that Singer now has, if not official information, at least some firm information as to the patent applications filed by Gegauf, and it indicates that it is now ready to enter into negotiations with Gegauf. And on page 2, your Honor, the first paragraph:

> "Several weeks ago the United States Patent Office unofficially advised us that the claims of our United States Harris Reissue patent application are allowable over the known issued patents. These claims, if allowed, would read on both the Singer and Bernina ma-

chines. It follows that such claims, if contained in a Bernina-United States patent application, would also be allowable over the known issued patents.

"We have been continually investigating the records of the United States Patent Office to locate any evidence [fol. 208] that would indicate that Bernina has filed a patent application corresponding to its original Swiss application of May 31, 1952 and until last week had found nothing to indicate that such an application had been filed. We now find that a Bernina patent application was recently recorded in the United States Patent Office, and, as this assignment referred to an application executed on May 20, 1953, it could relate to a patent application corresponding to the above-noted Swiss patent application. Unfortunately for us the parent Swiss-Bernina application was filed in Switzerland some nine days prior to the effective filing date in the United States of our Harris Reissue application No. 516,058."

I will continue to read, your Honor, because I think it is good information:

"From this it is reasonable to presume that if this United States-Bernina application in fact corresponds to the present Swiss case, the United States Patent Office would declare an Interference between this application and our recently-filed United States Harris Reissue application No. 516,058 for the purpose of de- [fol. 209] termining which of the two parties is entitled to the broad claim.

"Since any such United States-Bernina application would be entitled to its corresponding Swiss priority date of May 31, 1952, which is nine days prior to the effective United States filing date of June 9, 1952, of the Harris Reissue patent application, it would appear that Bernina might be entitled to the broad claim."

And now the author of this letter from the Singer Patent Department goes on to supply Mr. Waterman, the addressee

of the letter, with information relating to patent Interference proceedings. The document states:

"However, a United States Patent Interference proceeding is a long and complicated affair during which each party has an opportunity to attempt to block the ultimate allowance of the interferring claims to the opponent party. The outcome of such an Interference cannot be predicted with certainty.

"In other words, assuming that Bernina has filed such an application in the United States, then our [fol. 210] Harris Reissue application is of value to us as a means for opposing the final allowance to Bernina of broad United States claims covering multiple-cam ornamental machines."

If we may direct your Honor's attention to page 5 of this document, in the last line it states:

"In our opinion," says the Singer Patent Department, "no one party can or will corner the broadest patent protection in all or even in several of the principal countries.

"Should a Singer competitor acquire in any of the principal countries, with the possible exception of Japan and Switzerland, patents reading upon our Class 319 and Class 282 machines, we are reasonably certain that we can acquire favorable licenses under such patents.

"However, we hope to avoid the necessity of asking for such licenses and paying tribute under such patents by negotiating agreements with any potential patent owners before the worldwide patent picture clears relative to multiple-cam machines. This we have [fol. 211] already done with Vigorelli, and we suggested the same approach be used with Bernina and any other party which appears as a potential owner of a dominating patent."

The Court: Am I correct in my conclusion that this date, January 19, 1955, as shown by this exhibit, is the first time that Singer contemplated or discussed approaching Bernina or Gegauf with the idea of entering into any agreement?

Mr. Elkins: I believe that this is the first document of that nature, your Honor. Incidentally, the date of it is not 1955 but 1956.

The Court: Excuse me. I thought it was 1955. 1956 is right.

This is the first suggestion that we have of Singer contemplating discussing any agreement with Bernina.

Mr. Elkins: I believe that is the first document, your Honor, that hits directly on it.

The Court: And this was after the agreement with Vigorelli had been signed, sealed and delivered.

Mr. Elkins: The agreement with Vigorelli was signed, sealed and delivered November 14, 1955. It was during the negotiations relative to that agreement that Singer obtained for the first time information relative to the ex-
[fol. 212] istence of any Gegauf patents. The information that it received at that time came, it appeared, from——

The Court: Exhibit 10.

Mr. Elkins: Yes, and from Vigorelli, and on January 19, 1956.

The Court: Then am I correct in my understanding that Singer's agreement with Vigorelli was entirely completed and signed without even Singer having a thought of going to Bernina-Gegauf?

I won't press you at this point. Suppose you think that over and see. If my question is wrong, you correct it, will you, later on?

Mr. Elkins: No, I think it would be going too far, your Honor, to say that Singer had no thoughts, that Singer personnel had no thoughts——

The Court: Of course we don't know of any person's thoughts. I don't know what is in your mind. You don't know what is in my mind except as I display it by my words, gestures or my actions. But we have no evidence that Singer approached or contemplated approaching Gegauf. In fact, there might be evidence that would lead us to a contrary conclusion, that comment in Exhibit 15 that Vigorelli made no mention to Bernina of his arrangements with the Singer Company.

[fol. 213] Mr. Elkins: He was asked to.

The Court: Yes. And he agreed because he obeyed the suggestion or the request. All right. If, as you go along,

you find anything to correct my impression that the Vigorelli transaction of November was entirely completed and consummated without Singer even approaching Gegauf, and that the first evidence we have of them contemplating approaching Gegauf was Exhibit 16 under date of January 19, 1956, you tell me. And pardon me for interrupting you.

Mr. Elkins: No, that is all right.

Yes, we will accept that invitation, your Honor.

The Court: I just want to call one other matter to your attention. What leads me to the feeling that Singer did not even have a thought of it is the final, closing paragraph of this Exhibit 16 in which Stanford says, "Presumably the earlier we approach Bernina concerning this matter, the greater would be our chances of success."

Mr. Elkins: It says, "We believe that our position would be enhanced if we could negotiate an agreement of the Singer-Vigorelli type with Bernina. Presumably, the earlier we approach Bernina concerning this subject matter, [fol. 214] the greater would be our chances for success."

Exhibit 17, your Honor is a letter from Mr. Waterman, personal and confidential, to Mr. Baumann, who is the Director General of Singer in Italy, in which he requests information from Vigorelli relative to the details and the subject matter of the Vigorelli-Gegauf agreement. The last paragraph, first page:

> "It seems that during Dr. Lando's conversation with Mr. Vigorelli mention was made of the agreement Vigorelli has concluded with Bernina. This is stated to be along the same lines as that concluded between ourselves and Vigorelli last November. We are very much interested to learn of the Bernina-Vigorelli agreement as, confidentially, there is the possibly that we will want to meet sometime in the near future with Bernina representatives and discuss similar arrangements.
>
> "I think, if Dr. Lando could use the excuse of passing on to Vigorelli the foregoing information concerning the Singer patent about which he had inquired as a reason to again visit Pavia" (parenthetically, that is Vigorelli, who is located in the City of Pavia) [fol. 215] and have an informal talk with him, at which

time the information I have just given concerning the patent could be passed on to him, there would be a good opportunity to very informally chat about the Bernina agreement. We would very much like to know, of course, any further particulars that Mr. Vigorelli might pass out on such an occasion about the agreement with Bernina. We would like to know just how it came about that after Bernina having pressed as they did for the sum of $160,000 (this figure was mentioned during the course of our visit last November) the ultimate settlement was for no monetary consideration but only on the basis of neither party interferring with the other with respect probably to certain specific patents. We would like to know details of the particular patents that Vigorelli had come across which caused Bernina to drop its demands for the large amount for settlement; the numbers, if possible; and, of course, the inventor and the [fols. 216-218] country in which the patent or patents were taken out."

The Court: Which would seem to indicate that the conspiracy had not been formed yet, would it not?

Mr. Elkins: Gegauf and Singer have not yet met, your Honor.

The Court: That's right. When do you charge in the complaint that the conspiracy was formed?

Mr. Elkins: It was in 1956, in about 1956.

The Court: All right.

. . . . . .

[fol. 219] Mr. Elkins:

In Exhibit 19, on page 2, there appears a report of Dr. Lando on his visit to Vigorelli. Now this is submitted to Singer pursuant to Singer's request for information relative to the Vigorelli-Gegauf transaction, and it states:

"With reference to the contents of Mr. M. L. Waterman's letter of February 6, 1956, I had a meeting with Mr. Vigorelli in Pavia on February 29th and I am setting out below a summary of the information ob-

tained during the course of a long and friendly conversation."

On the same page:

> "After having underlined to Mr. Vigorelli the advantages of the agreement with Singer as revealed in the Harris case (fully recognized by Vigorelli) I proceeded to ask him what were the reasons which caused the change in the Bernina's attitude which, from an original demand for 100 million lire (or 20 Swiss Francs per machine) consented to an agreement which did not contemplate payments of any kind.

According to Vigorelli this change was due to a variety of reasons each of which had its importance and which can thus be summarized:

[fols. 220-221] "(1) Weakness of the Italian Gegauf-Bernina patent, the contents of which were too generic, and in which the device—common to the Vigorelli machine—which came to be fundamental (multiple cams cooperating with single cam-follower) is described in the patent among the minor details, in fact as one of the possible variations."

In paragraph 3, as another reason advanced by Vigorelli:

> "The exhibition by Vigorelli of patents, of whose existence Gegauf-Bernina thought that Vigorelli was unaware, patents which apart from excluding that the general claim (multiple cams) could be sustained, also left open to discussion the specific claim (single cam-follower) contained in the two patents under discussion."

In paragraph 4, as they number it, he goes on to state:

> "The declaration on the part of Vigorelli of the existence of other patents of the same kind as those mentioned above."

. . . . . .

[fols. 222-224] The Court: May I interrupt a moment?

Mr. Elkins: I beg your pardon, your Honor.

The Court: I want to refer to that Exhibit 19.

Mr. Elkins: Oh, yes.

The Court: What significance, if any, do you attach to the last paragraph of 19?

Mr. Elkins: Is that the paragraph beginning, your Honor "Both parties further undertake not to cede"——

The Court: No, in that paragraph where it says "Mr. Vigorelli's reply was interesting 'I was under the impression that Singer was collecting information for opposing the Gegauf-Bernina patent in U.S. and prevent the sale of their machine there.'"

Mr. Elkins: I am trying to locate it—oh, I see. It goes on, your Honor, on page 3.

The Court: Yes. Suppose you make a note of it and make comment on it later on, if you want to—or your assistants can make a note of it.

Mr. Elkins: We attach no great significance to it one way or the other right now, your Honor. I think other documents will fill in.

The Court: All right.

. . . . . .

[fol. 225] Mr. Elkins: The next exhibit, your Honor, Government's Exhibit No. 22, merely shows that a meeting between Singer representatives and Gegauf has been set for April 12, 1956.

. . . . . .

[fol. 226] The next exhibit, Exhibit 24, sets forth some of the details of the negotiations that occurred between Singer and Gegauf.

On the second page, in the last paragraph, about the fifth line down, your Honor, the writer of this memorandum, who is Mr. Waterman, vice president of Singer—and the date of the memorandum is April 13, 1956, and it is directed to Mr. Lightner, president of Singer, and it states:

> "We certainly left with them no doubt but that we were going to offer objection to the issuance of their patent not only in the United States but in every other country of the four in which they are seeking patent

or have patent protection, and we let them know that we thought we could knock out their claims, but that in so doing we were probably going to hurt both of us. I think that at the end of our long meeting they felt a little bit different about their situation than they [fol. 227] did when we started because they went into a huddle and actually drew up a paper which they were willing to sign and I won't say wanted us to sign but which we could sign."

And if we may direct your Honor's attention to the first page of this exhibit, paragraph 3, wherein Mr. Waterman states to the president of Singer "Gegauf's big fear is that the Japanese machines coming into the United States will be sold at a lower price than his machines will be because of their low-price labor. I think his fears are well-founded, and we did not do anything to cause them to be other than along the line that he was thinking, because one of the strong points of our argument for the agreement between our two companies is in order to fight against this Japanese competition in their building a machine that in any way reads on the patents of ourselves and of Bernina which are in conflict."

This document also reflects on the second page, the second full paragraph, that Mr. Gegauf was present at these negotiations together with Stanford of Singer and Mr. Waterman of Singer.

The next exhibit, Exhibit No. 25 is out, your Honor. It has been excluded.

[fol. 228] Exhibit No. 26 is an agreement dated April 14, 1956, between Singer and Bernina.

The Court: Let us spend one moment on Exhibit 24, the paragraph that you read from the first page marked "Japanese competition in their building a machine that in any way reads on the patents of ourselves and of Bernina which are in conflict."

Mr. Elkins: Yes, your Honor.

The Court: Must not we read this "which are in conflict", as referring to the prior exhibits which show that this is not a conflict of claims as much as in priority of filing—that the real dispute was who had the prior filing rather than the nature of the claims; that there was no con-

flict in the claims of the patent applications but the conflict would arise from interference proceedings because of an alleged 9-day earlier filing of a Swiss application.

Doesn't he mean that when he says "conflict"—isn't that a conflict which is derived from a priority of filing, as revealed by the prior exhibits rather than the breadth of the claims of the patent applications?

Mr. Elkins: I believe your Honor is right, your interpretation is right. However, so that there will be no possibility of an error by omission, we believe here that [fol. 229] Mr. Waterman was talking about the Geguaf patent application and the patent applications of Singer, and the fact that each patent application or applications had matter that was the same and therefore in conflict.

The Court: But the conflict arose because of the date of priority, because of an interference of priority of filing.

Mr. Elkins: Then there is, as indicated by the documents, that Gegauf is nine days prior.

The Court: So it might be argued, as pointed out by Singer, that the Gegauf Swiss application was filed in Switzerland nine days, I think, before the Singer application was filed here in the United States, as I read the prior exhibits.

Mr. Elkins: That is substantially it, but in order to fill in, your Honor, may I say that there was no uncertainty here in relation to the priority by nine days of the Gegauf application. Gegauf is, as we say, a manufacturer of Switzerland and is not a resident of the United States. The other patent which Singer—or the patent which Singer has pending here in the United States is the Harris Reissue application which it acquired from a Canadian, so [fol. 230] that here we have a situation wherein the two applicants, original applicants are non-citizens of the United States, and that under the rules the determination of priority as to both goes back merely to the date of the filing of their original foreign application, namely, Harris in Canada and Vigorelli—or rather, I am sorry, Gegauf in Switzerland.

So it is merely looking at those dates and seeing that Gegauf is nine days prior.

Now the agreement that resulted, your Honor, in Exhibit 26——

The Court: What I had in mind was that the agreement between Gegauf and Singer it would seem did not operate to acquire broader patent claims but simply to establish the validity of one of the two patents, both with the same claims, so that this was not an agreement that contemplated an acquisition of broader claims than those which were asserted in either of the patent applications.

Mr. Elkins: If we may address ourselves to that for a moment, your Honor, I do not think there is any misunderstanding.

The Court: All right.

[fol. 231] Mr. Pettit: I would like to call attention to something that I think he would like to know. I think he inadvertently made a mistake—I may be wrong, but the priority date is not determined solely by the filing date. Harris could have shown that he disclosed his invention here and thereby he would have been earlier than Gegauf at that time. I think he misunderstood that.

The Court: But in either event, the conflict arose from the date of priority of filing and that the agreement between Singer and Gegauf did not operate to broaden the claims of the patent applications but simply to establish the validity of one of the two of them, which would have resulted anyway.

Mr. Pettit: That is correct. The only mistake was that he said there was no uncertainty as to the date, and there was uncertainty because Gegauf could not know.

The Court: All right.

Mr. Elkins: I did not catch the last comment of opposing counsel.

The Court: Well, Mr. Pettit points out that Singer's documents really point out the situation which may be raised by a question of priority of filing, but that Singer in its documents also felt quite positive or quite assured [fol. 232] of its position of ultimately sustaining the Harris patent, and it was simply to avoid a conflict, an interference conflict, and to clear of this question as to priority of filing that Singer was prompted to go in and make this agreement with Gegauf.

Mr. Pettit: Your Honor, we had no assurance that we would be ahead. In fact, we felt confident because we knew the facts that Gegauf would be ahead. The only point

was that there was no certainty, because Gegauf did not know about these disclosures in this country. Therefore when they were negotiating there was no certainty as to what the facts were in Gegauf's mind. He did not know the disclosures situation. We did. Therefore Singer did know that it would be beaten by nine days.

Mr. Elkins: There are a few matters, your Honor, to which we would like to direct ourselves merely for the purpose of filling in the record, and to make sure that the picture is an accurate one.

I am reading now from paragraph 37 of the agreed statement, which states "Prior to January 19, 1956, the United States Patent Office had unofficially advised Singer that the claims in its U.S. Harris Reissue patent application, which claims would read on both the Singer and the Gegauf machines, were allowable over the known issued [fol. 233] patent. On January 19th Singer's Patent Department pointed out to Singer officials that such being the fact, it followed if such claims were contained in a Gegauf United States patent application, they would be allowable and that with a priority date nine days prior to the filing of the Harris Reissue application, it would appear that Gegauf might be entitled to the broad claims."

It goes on: "It further pointed out that in such event the Harris Reissue application was nevertheless of value to Singer as a means for opposing the final allowance to Gegauf of broad United States claims covering multicam machines. It accordingly strongly recommended that Singer attempt to work out with Gegauf an agreement along the lines of the Vigorelli-Singer agreement and pointed out that chances of negotiating such an agreement would be greatly enhanced if Singer could approach Gegauf before any patent interference would be claimed as prior to any such interference, while Gegauf would have no knowledge as to the effective filing date of the Harris patent application, Singer would be in a better bargaining position with Gegauf."

So it seems the filing dates were of particular significance, and although opposing counsel says that if Mr. [fol. 234] Harris had his machine here in the United States for some time and disclosed it, that of course would come into an interference proceeding.

Now in relation——

The Court: But my point was—and if I am wrong, you correct me—the net result of the agreement between Gegauf and Singer was not to acquire broader patent claims but simply to acquire a right in a patent which was established, irrespective of the conflict of filing dates.

Mr. Elkins: If your Honor please, the applications of both had in them, as indicated by these documents, what they described as broad claims. The purpose of conflict proceedings, opposition proceedings, interference proceedings is varied, including the right of the parties to file motions, and to perhaps narrow the claims of the other applicant. As to interference in the United States, it is twofold: one of the minor functions, or one of the functions of it is to determine the priority, but that is only one phase of an interference proceeding, of the interference proceedings, after the claims on which the interference is declared is made known to each of the parties, and then the parties for the first time——

[fol. 235] The Court: You assume that I understand that, but there is no record here that Singer would oppose the Gegauf patent because it interfered with the claims allowed in any other patent, other than the Harris application, so that the agreement between Gegauf and Singer served only to dispose of a possible interference proceeding as to which patent application had priority and did not affect the patent claims or the application claims as stated in either application.

Mr. Elkins: No, your Honor, we do not agree.

The Court: All right.

Mr. Elkins: Which introduces us to the next exhibit, your Honor, Exhibit No. 26 between Singer and Gegauf, dated April 14, 1956.

On the first page of this agreement Singer lists, or there is listed the various Harris Reissue applications which is noted [illegible] in the United States, Great Britain, Belgium, Canada, France, Italy, Germany, Japan and Sweden, and then there are listed the four patent applications of Gegauf, which is noted for the U.S.A., Italy, Germany and Switzerland.

Now on page 2 of this agreement, in the paragraph

numbered 1 it states "Singer and Gegauf each undertakes not to do anything, either directly or indirectly and in [fol. 236] any country, the result of which might restrict the scope of the claims of the other party relating to the subject matter of the above mentioned patents and patent applications."

As to that provision, your Honor, we say that that precludes both Singer and Gegauf from engaging in any kind of a proceeding whatsoever which might possibly "restrict the scope of the claims of the other party"—and not only that, but they are precluded from doing anything directly or indirectly in any country, the result of which might restrict the scope of the claims of the other parties—and our mind goes back to the memorandum or the letter of Mr. Waterman in which he stated relative to this agreement "One of the strong points of our argument for the agreement between our two companies is in order to fight against this Japanese competition in their building a machine that in any way reads on the patents of ourselves and of Bernina which are in conflict".

And this paragraph here is, we say, the result of it.

The agreement goes on to provide that "Singer and Gegauf each undertakes, in accordance with the laws and regulations of the Patent Office concerned, to facilitate [fol. 237] the allowance in any country of claims as broad as possible, as regards the subject matter of the patent and patent applications referred to."

Paragraph numbered 2 reads: "Singer undertakes not to attack Gegauf, either directly or indirectly, in any country:

(a) on the basis of any of its above mentioned patents or patent applications.

(b) for the present construction of the Bernina Sewing Machine as shown on the photograph attached to the present agreement and signed on the back by both parties."

[fols. 238-239] Paragraph 3 provides:

> "Gegauf undertakes not to attack Singer either directly or indirectly in any country on the basis of any of its above-mentioned patents or patent applications."

The significance of that agreement, your Honor, is, we say, twofold. Significant is the paragraph under which each undertakes not to do anything directly or indirectly and in any country, the result of which might restrict the scope of the claims of the other, and also the provisions which indicate that Singer, pursuant to this agreement, is free now of any patents that might result to Gegauf, free to manufacture in the United States and to sell its products in the United States and, indeed, throughout the world, without any thoughts as to a patent, that might ultimately result from these applications, to Gegauf, and that privilege Singer has royalty-free.

. . . . . .

[fol. 240] The exhibit from which we are quoting, Government's Exhibit 27, is entitled Notes Dictated at Milan, Friday, April 20, 1956, and this document reflects that there is a discussion here at Milan a few days after the execution of the Singer-Gegauf agreement, which discussions are between Mr. Stanford and Mr. Waterman of Singer and Mr. Vigorelli and Vigorelli's patent attorney.

If I may direct your Honor's attention to page 2, the first full paragraph states:

> "At this point it should perhaps be mentioned that Mr. Stanford and I have discussed between ourselves whether we should say anything to Mr. Gegauf about our feeling that we could prosecute his patents that will be issued sometime within the next few months in the United States better than perhaps he could if [fol. 241] we owned them, but we had decided not to say anything to Mr. Gegauf about this at this time.
>
> "In talking with Mr. Vigorelli's lawyer, Mr. Stanford dropped this view to him. The point was immediately understood, and the question was raised if we would have any objection if they were to pass the word on to Mr. Gegauf that they were raising this point. We said that of course we would have no objection but that we ourselves did not wish to do this, and we would not want the suggestion coming to Mr. Gegauf at this time as from us. If they wanted to suggest it, it was all right."

We say here that Singer, after a few days, previously agreed with Gegauf that it would not do anything which might limit the scope of the claims of the Gegauf patent applications in any country, including the United States, that might restrict the scope of those claims—"has at least within a few days thereafter the intentions of buying the Gegauf applications," and we also note that in order to get that particular subject going, Mr. Stanford dropped such a view in talking with Mr. Vigorelli's lawyer and, as the document states, "The point was immediately under-[fol. 242] stood."

We do not mean, your Honor, when we quote from this document, that we consider that this memorandum gives the full content of the negotiations, of the discussions, the conferences between Vigorelli and his patent attorney on the one hand and Stanford and Waterman of Singer on the other hand which occurred here in Milan, Italy. This document merely reflects that Singer tells Vigorelli that it would be good if Singer owned the United States patent applications of Gegauf and they asked Vigorelli's patent attorney to make some effort in that direction to prompt it from Gegauf.

Exhibit 28 is a handwritten note of Mr. Stanford of the Singer Patent Department which is stamped by the Patent Department "Received May 7, 1956," and, as your Honor notices, it is handwritten note, and we only want, however, a sentence from it, and that is clearly legible. In the second paragraph, the second sentence, Mr. Stanford states in this letter, which is addressed to Mr. Williams:

> "When in Italy we laid careful plans for Gegauf to be advised by a third party that Singer could best handle the patent situation if we owned the Gegauf [fol. 243] United States patent. Think it will bear fruit."

Mr. Stanford is obviously referring to the conference at Milan in which Singer representatives requested the aid or the cooperation of Mr. Vigorelli or his patent attorney to prompt the Gegauf assignment of his United States patent applications to Singer.

In making this statement, we want to point out to the court that Mr. Stanford does not talk about Singer being

best able to handle the patents of Mr. Gegauf. He is not here referring to a patent. Hs is referring to something which is far broader than that and something that encompasses much more, as we will show, when he says, "We laid careful plans for Gegauf to be advised by a third party that Singer could best handle the patent situation if we owned the Gegauf United States patent."

As we say, he is not talking about a particular patent; he is talking about having laid careful plans that Singer could best handle the patent situation if it owned the Gegauf patents, and he is not referring to the handling of a particular patent.

The Court: Wait a minute. Doesn't he refer to the previous letter, Exhibit 27, page 2, the first and second complete paragraphs of page 2? Isn't that what he is [fol. 244] referring to?

Mr. Elkins: Page 2, your Honor?

The Court: Yes, that they suggested to Vigorelli that he should talk to—didn't suggest it, but they brought Vigorelli around to the point where he said he would talk to Gegauf about whether or not Singer could prosecute Gegauf's patents "which will be issued sometime within the next few months." Isn't that what this handwritten letter refers to?

Mr. Elkins: May I say, your Honor, that the handwritten letter to which you refer does relate to the conference in Milan between Singer representatives and Vigorelli and Vigorelli's patent attorney. The memorandum from which your Honor just read, which is Government's Exhibit 27, we referred to previously, and at the time we did we stated that although we were quoting from it we did not represent that it contained, and obviously it does not contain, the full contents of the discussions there between Vigorelli on the one hand and Singer on the other hand.

Here in the memorandum, as your Honor carefully notes —well, Mr. Stanford dropped his view to Vigorelli's patent attorney, who immediately understood the point.

[fol. 245] The Court: His view being that Singer could prosecute Gegauf's patents, which will be issued sometime within the next few months, in the United States better than perhaps he could if he owned them, and that's all it refers to. It doesn't refer to a lot of patents; it is

just this one patent that Singer had acquired a right to use. I mean, you talk of quoting from part of a document and then say that it doesn't contain everything. Have you anything to support that other than a sinister and unfounded suspicion? Have you any document to support this statement that there was anything else that happened at this meeting which is recorded in Exhibit 27 other than what is set forth in this memorandum?

Mr. Elkins: Well, we said, when we quoted from the memorandum, and we say now, that it does not purport, obviously, to set forth everything that was said between Singer and Vigorelli, and in relation to your question, your Honor, as to whether we will rely upon other documents to reflect light on what occurred at this conference at Milan, Italy, the answer is yes, we will.

The Court: All right.

Mr. Elkins: We are not reading—we did not read, did not try to read into this memorandum anything other than [fols. 246-248] what it specifically sets forth; and your Honor is right, it sets forth there that Singer is looking for the Gegauf patents and that Singer could better prosecute them in the United States.

. . . . . .

[fol. 249] The letter, without any changes, is Exhibit No. 30. It is from Mr. Waterman to Mr. Baumann and is dated June 11, 1956.

This, if your Honor please, recalls the conference between Singer representatives and Vigorelli and Vigorelli's patent attorney in the land to which we just referred, and the letter states:

> "When I was in Milan you will recall that we had a conference with Mr. Vigorelli and his attorneys. During this conference, the idea was put forward, I believe by Mr. Vigorelli's attorney, that it would be advantageous to all parties if Singer owned the Gegauf United States Patent Application No. 358,377. It was thought that it would be best if the suggestion that Gegauf transfer his patent application to Singer come to Mr. Gegauf from Vigorelli or some other source than Singer. It was left that Mr. Marcello Magnoni,

> Mr. Vigorelli's patent attorney, would write or otherwise convey to Mr. Gegauf's patent attorneys in [fol. 250] Zurich the suggestion that the transfer be made and, at the same time, set forth its advantages to all parties."

Now this document, too, throws light on the Milan conference and it adds an additional fact as to what occurred there in the discussions between Singer and Vigorelli. So that as well as Vigorelli undertaking the mission of initiating a transfer of the Gegauf patents to Singer, it was also agreed there that Mr. Vigorelli—and I am now reading from the document—"at the same time, set forth its advantages to all parties."—that is, advantages to Vigorelli, to Gegauf and to Singer."

[fol. 251] This document goes on to say in the second paragraph:

> "I am expecting a visit here in New York from Mr. Fritz Gegauf, Jr., in July and, before his arrival, I would be interested to know if Mr. Magnoni has transmitted the suggestion to Mr. Gegauf's attorneys. Will you please make inquiry as to whether or not this has been done."

Mr. Fritz Gegauf, Jr., referred to there, your Honor, is the son of Mr. Gegauf to whom we had previously referred, and we ask the court to note here that there is to be a visit in New York from Gegauf, Jr., to Singer, and that prior thereto Mr. Waterman of Singer wants to find out what approach, if any, has been undertaken by Vigorelli's attorney pursuant to the conference at Milan.

The next exhibit, Exhibit No. 31, is or sets forth the answer. This is a letter from Singer, Italy to Mr. Waterman and is in answer to Mr. Waterman's letter of June 11th that we have just referred to, and the letter reads:

> "The matter raised in your letter of June 11th has not been lost sight of and coincident with the receipt [fol. 252] of your letter today we have today received a communication from Ing. Magnoni which would indicate that there are good prospects for the transfer of the Gegauf patent to Singer being brought about.

"While I attach a copy of Mr. Magnoni's letter, I cannot do better than give you below a translation of same."

And then Magnoni goes on to say:

"With regard to the question of the advantage of the American Singer Company being in possession of the different patents which might be useful in defense of sewing machines with multiple cams, the writer has lately had the opportunity of talking to the patent attorneys of Mr. F. Gegauf on a number of occasions and the conversations have developed in such a way that the possibility and advantage that the Gegauf patent application in the States be assigned to Singer could be considered in a definite way.

"Because of the particular character of the question, this was done in such a way as to prompt an initiative to this end by Gegauf. The writer has good reasons [fol. 253] to believe that such a point of view might be accepted by Gegauf.

"I believe that in the next few days Messrs. Gegauf will get into touch with the writer with this end in view, and should this hoped-for occasion come about, he will be able to report freely on the conclusion of the question which it is hoped will be a favorable one."

This document, too, adds some information as to what occurred at this Milan conference to which we have referred. We ask your Honor to note that the documents that we have just discussed did not in and of themselves, in regard to Vigorelli's patent attorney, mention the idea of the American Singer Company being in possession of the different patents which might be useful in the United States.

We ask the court to bear in mind that the only letter that went out to Italy and to Singer of Italy in relation to this matter was the one we just read which in substance merely said "Find out from Vigorelli's attorney if he has carried out the mission which he was going to execute for us"; and the answer of Mr. Vigorelli's patent attorney, Mr. [fol. 254] Magnoni, as it appears in Exhibit No. 31, starts off without an aye or a yes or a no and says, "With regard to the question of the advantage of the American Singer

Company being in possession of the different patents which might be useful in defense of sewing machines with multiple cams" and so forth.

Vigorelli's patent attorney got that subject from some place. It was not, as we said, mentioned in the letter that we just referred to that went to Mr. Baumann. All that that letter did was to recall that there was a conference in Milan, Italy, and in picking it up Mr. Vigorelli's patent attorney begins his letter, as I say, simply with "With regard to the question of Singer being in possession of the different patents."

So that as to that Milan conference, your Honor, there were things said there other than as reflected in the memorandum by Mr. Lightner to which we earlier referred, and the subsequent documents show that as well as asking Vigorelli or Vigorelli's patent attorney to initiate the transfer of the Gegauf patent applications to Singer, there was also a discussion there as to the mutual advantages, of the advantages to all parties, namely, Gegauf, Vigorelli and Singer, and it is also clear from the document just referred [fol. 255] to that one of the things discussed there as an advantage to all of the parties concerned was the fact that Singer then would be in possession of the different patents which might be useful in the United States in relation to the multi-cam machines.

Exhibit 32, your Honor, also contains information from Mr. Magnoni, patent counsel for Vigorelli, as to the very same mission that he was accomplishing or attempting to accomplish for Singer, namely, initiating the transfer of the Gegauf patent applications to Singer. The letter, incidentally, is dated September 19, 1956, and is to Mr. Stanford from Mr. Lando, the Assistant Director General of Singer-Italy, and this letter, the quoted part, begins:

> " 'Mr. Gegauf is today effectively willing to transfer his patent application in the U. S. to the Singer, without regard or with little regard to the financial side of the matter. The interest of Mr. Gegauf in the matter has been arisen by the following developments:
>
> " 'during the various discussions between Vigorelli and Gegauf (wherein Gegauf stated that the Vigorelli ZZ/A machine was infringing the Italian Gegauf patent), Mr. Gegauf has been strongly impressed by the

[fol. 256] fact that the U. S. Van Tuyl patent No. 2,590,907 might very dangerously anticipate its invention. In effect, a third party who might know that the said Van Tuyl patent exists might take steps for having the Gegauf German patent held not valid.

" 'Mr. Gegauf is particularly and prevailingly interested to have a not objectionable patent in Germany, and for such end he made informally known to Mr. Vigorelli that the withdrawing of the Vigorelli application in the U. S. would be greatly appreciated, to prevent the issuance of a printed patent wherein the fact that the Van Tuyl patent exists will be made known to third parties.

" 'Informally, through Mr. Magnoni, Vigorelli agreed with the withdrawing of his U. S. application on condition that any other interested party (say, unamedly, Singer) agree to, and that another application (say, consequently, the Gegauf one) might be put at disposal of the said other interested party in lieu of the Vigorelli one, to make broader the protection [fol. 257] of the machines in the U. S., in addition to the Harris patents.

" 'Mr. Gegauf's mind has been therefore directed to the convenience of transferring his U. S. application to Singer.

" 'Mr. Magnoni pointed out that Vigorelli would consequently drop any direct means adapted to protect his machines in the U. S., but he is quite sure that Singer will take care of the protection of the machines of the general type of interest, by making use of the owned Harris and Gegauf patents.

" 'Further, Mr. Magnoni thinks that the claims of the Gegauf still-pending application probably might be completed by ones in which some of the Vigorelli features, if of interest, would be protected.' "

The conference between Mr. Waterman of Singer and Gegauf, Jr., to which one of the previous documents referred, did take place in New York and to our knowledge there is no memorandum which sets forth what happened there. Exhibit No. 33, however, relates to that conference between Waterman and Gegauf, Jr. and throws

some light upon it. In the first paragraph it refers to the [fol. 257a] visit of Gegauf, Jr.

> "We refer to the recent visit of our Mr. Gegauf Jr., with party at your office in New York City and thank you for your kind reception."

[fol. 258] In the next paragraph it shows that the subject matter of the conference between Waterman and Gegauf, Jr. related to the Singer acquisition of Gegauf patent applications. That paragraph reads "Your suggestion as to the pending United States patent re automatic embroidery stitching machines has been taken up with Mr. Gegauf, Sr. and we can inform you that he might be interested in such an agreement."

This last paragraph, your Honor, also throws some very telling light upon that conference between that Gegauf, Jr. and Waterman, and it states "We agree that something should be done against Japanese competition in your country and maybe South America, and are therefore looking forward to your early reply".

We say that that response to the visit of Mr. Gegauf, Jr. in New York and his conference with Mr. Waterman indicates that they talked about the feasibility, of the advantages of Singer acquiring the Gegauf patent applications, and that it also involved the use of those patents against Japanese competition in the United States.

The next exhibit, Exhibit No. 34, sets up a conference date with Gegauf and in relation to the agreement with Gegauf, relative to the assignment of his United States [fol. 259] patent application says, beginning in the second line "We feel arrangement can be equally advantageous to both."

Exhibit 35 further relates to the proposed meeting between Gegauf and Singer representatives and regarding the same subject matter, that is, the assignment by Gegauf of the patent applications in the United States to Singer, Mr. Waterman, the author of this letter which went to Mr. Fritz Gegauf, and is dated September 7, 1956, relative to that agreement, said "We do believe that it may be possible that we can both strengthen our positions with respect to the Japanese competition which you mention, and I hope

that we can again meet and discuss our respective situations."

Exhibit No. 36, your Honor, contains two paragraphs which present a succinct picture.

In the first paragraph, Mr. Stanford of the Singer Patent Department states "This will confirm our today's telephone conversation in which I advised you that Singer is licensed under any claims that Mr. Gegauf may obtain in his U.S. patent application No. 358,377 and Bernina is licensed under any claims which Singer may obtain in its Harris patent application Re. 516,058."

[fol. 260] The letter goes on in the second paragraph and says "This will also confirm my statement that Singer is interested in acquiring all of the rights in the Gegauf patent application No. 358,377 and for that reason I wish to have knowledge of the file contents before I leave for Europe on Monday, September 17th."

That letter, incidentally, is directed to Mr. Leon M. Strauss, who is patent attorney in the United States for Mr. Gegauf.

Now there was a conference between Mr. Gegauf and the Singer representatives, as reflected, your Honor, by Government's Exhibit No. 37. This is a letter dated October 9, 1956, directed to Mr. Lando, Assistant General Director of Singer Italy, and contains information which, as stated in the last paragraph, Singer thought Mr. Lando might like to have if the subject should come up in talking with Mr. Vigorelli or his attorney; and the letter indicates that there was a discussion between Singer and Vigorelli, and that no agreement relative to the assignment of the Gegauf patent to Singer was made.

There is a later document, your Honor, which indicates that at this conference on October, 1956, the parties agree that they would defer any further negotiations until the [fol. 261] patents proceeded in the United States Patent Office.

Consequently, there is a gap of time as between that phase of the negotiations and the next phase that were undertaken some time later.

The Court: Don't you think that that gap occurred because Gegauf wanted to get $1,000,000 from Singer?

That does not ring like a conspiracy to me, you know.

Mr. Elkins: In relation to the amount of money that Gegauf wanted.

The Court: Yes. In Exhibit 38, you have a recording there—I think it is 38—let me see.

Mr. Elkins: Yes.

The Court: Maybe it is 37—37 records that Gegauf asked for $1,000,000, and then after a lengthy conversation—and it must have been quite lengthy—he reduced his request to a quarter of a million dollars.

Mr. Elkins: Correct.

The Court: And Singer apparently at that point said, in quite a friendly basis, as is recorded in the document. "Nothing doing".

Now does that spell out a conspiracy?

[fol. 262] Mr. Elkins: Your Honor, it spells out that this particular phase of the negotiations did not result in any assignment by Gegauf to Singer.

The Court: Doesn't it spell out that these people were dealing at arm's length? Isn't that the natural inference that should be drawn from that?

Mr. Elkins: I cannot draw that, your Honor, and I do not believe that it is——

The Court: It is like a man with dark glasses who is sensitive to sunlight!

Mr. Elkins: What is——

The Court: This transaction occurred after the point where the government says the conspiracy had been formed, because, as I understand it, the government's contention is that the conspiracy was afoot at the time of the Gegauf-Singer agreement. Now this is after that. Here you have Gegauf looking for $1,000,000 from Singer.

Mr. Elkins: To be exact, your Honor, after lengthy negotiations, a quarter of a million dollars.

The Court: That is a lengthy conversation.

Mr. Elkins: Yes.

The Court: That is $750,000 worth of conversations.

(Laughter)

[fol. 263] Mr. Elkins: That is right—$750,000 worth of conversations, according to the exhibit, and one would think that perhaps Mr. Gegauf did not come down three-quarters of a million dollars merely because of a lengthy conversation.

The Court: I suppose that Gegauf, the natural inference would be that when Singer got in touch wtih Gegauf's New York attorney the New York attorney must have said "Here's a chance of you collecting a little money from your alleged conspirator, and ask him for a million dollars and see how much you can get out of it."

Mr. Elkins: Possibly, your Honor.

The Court: All right.

Mr. Elkins: We would like to say this, your Honor, which is in our mind. We say here that as a result of these negotiations ultimately patents are grouped in Singer, a Singer pool, and that that is an essential part of the conspiracy.

Now, the mere fact that one party has more to contribute to the pool neither adds nor detracts from the question as to whether or not there is a conspiracy of the type as we described it. Certainly, Gegauf is not trying to say, "Well, fine, we will start the pool and I will take a patent [fol. 264] which I think is worth a quarter of a million dollars and I will throw it in, with nothing to boot."

The position of Gegauf seems to be, or could be, "We think we will show that inasmuch as he is contributing more to the pool that there should be something to boot."

The Court: But he has already made the agreement with Singer giving Singer a license.

Mr. Elkins: That's right, your Honor.

The Court: To manufacture and market under the Gegauf No. 1 application, hasn't he?

Mr. Elkins: Yes, your Honor.

The Court: And that was an act that you say marks the actual work done under the conspiracy, and you say that the evil of all of this is that while it may be lawful for an American manufacturer to acquire a patent monopoly to protect and market his product, that the evil is that this transfer was accomplished as a result of an unholy alliance on a worldwide basis, and all the other allegations, to stop importation of Japanese machines.

Mr. Elkins: Yes, your Honor, that is the size of it, and may I fill in. We say as to the previous agreement——

[fols. 265-266] The Court: Now, let me ask a question on that. You don't mind me interrupting you?

Mr. Elkins: No, not at all.

The Court: So I can get your point here. The thrust of your contention—now, when you spoke of this globular conspiracy, in that fashion, did you mean to intimate by that—you don't charge it in the complaint, but I was wondering whether you meant by that that there had been a worldwide division of territories.

Mr. Elkins: No, your Honor.

The Court: You don't charge that?

Mr. Elkins: We don't charge that.

The Court: Okay. All right, I simply wanted to be sure of that.

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[fol. 267] Your Honor, Government's Exhibits No. 38 and 39 and 40 and 41 and 42 we can dispose of in one swoop. They all relate to the same subject matter and involve letters between Singer officials and a proposed letter to Gegauf, and, finally, the adoption of the letter to Gegauf.

And the only part to which we went to refer is in exhibit, Government's Exhibit 41 on the first page, in which it is stated by the Singer Patent Department to Gegauf: "Our agreement provides that this interference is to be settled in accordance with the patent laws of the United States."

The Court: Now, that is the interference as to the priority and date of filing, isn't it?

Mr. Elkins: That is an interference, your Honor, between a Singer patent, Singer-Harris, and Gegauf patent application.

The Court: As to what? As to the scope of the claims, or as to priority of filing?

Mr. Elkins: An interference, your Honor, would involve both, or could involve both.

The Court: It might involve both, but what did this one involve? It seems to me that everything indicated that [fol. 268] something involved a point of priority of filing.

Mr. Elkins: There are, or were prior to this time, and at this time, October, 1956, two patent applications in the United States Patent Office which had similar subject matter, and consequently the Patent Office declared that they interfered, and pursuant to the declaration of the interference an interference is established, and one part of it

certainly involves a determination as to which one is prior, but as your Honor stated this morning you are acquainted with the fact that an interference proceeding can involve much more than merely determining who is first.

. . . . . .

[fol. 269] The Court: I see in Exhibit 16 on the second page Singer recognizes that the claims of the Gegauf application are the same and anticipate the claims of a Harris application if it has priority, so that the only possible interference in Singer's view would be one of priority of filing.

Mr. Elkins: Your Honor, merely because Singer has set forth a claim in an application it does not follow from that that the same claims in another application are completely patentable and allowable. If Singer loses on an inter-
[fol. 270] ference proceeding because its date was not prior to that of Gegauf, it is not out in the cold. Here if a competing patent applicant, and a competitor, is prior then Singer has all the right in the world to attack that patent application.

The Court: Singer recognized and believed that it had no right to attack the patent claims, and has so indicated in that Exhibit No. 16 that I have just called your attention to.

Mr. Elkins: As I understand it, there is no question in your Honor's mind but that Singer as a matter of law had a right to attack the Gegauf application at the interference proceedings to narrow the claim——.

The Court: If they had any basis for doing it, but by this Exhibit 16 it seems to me that Singer recognized it had no basis for such an attack. It beneficially advised that the claims of the U.S. Harris Reissued patent are allowable under the known issued patents, that there is no conflict then in prior art as disclosed from prior U.S. patents, and it said these claims, if allowed, would read on both the Singer and Bernina machines, it follows that such claims if contained in a Bernina U.S. patent application would also be allowable over the known issued patents.

[fol. 271] Singer, right or wrong, felt that if they were defeated on the priority of filing that Gegauf could stop them.

All right.

Mr. Elkins: Your Honor, still with Exhibit 16, if I may direct your Honor's attention to page 3 thereof, the first full paragraph:

> "However, a United States patent interference proceeding is a long and complicated affair during which each party has an opportunity to attempt to block the ultimate allowance of the interfering claims to the opponent party. The outcome of such an interference cannot be predicted with certainty. In other words, assuming that Bernina has filed such an application in the United States, then our Harris Reissue application is of value to us as a means for opposing the final allowance to Bernina of broad United States claims covering multiple cam ornamental machines."

As to the excerpts that you read, your Honor, before the Patent Office can declare an interference it must first make a preliminary decision as to whether or not there is anything here that is patentable, but that decision is [fols. 271a-273] not a final one, as your Honor I am sure well knows, it is preliminary and it is purely a precedent to the declaration of an interference. Thereafter, the parties in interference may, as we say, oppose the allowance of the broad claim to the other party.

. . . . . .

[fol. 274] We read at length from that exhibit, Exhibit 43, your Honor, although it was not the letter actually sent to Mr. Gegauf. The letter that was sent to Mr. Gegauf, however, was substantially the same with but one significant change: Mr. Stanford in his proposed letter for the signature of Mr. Waterman, as your Honor knows, specifically referred to the Japanese sewing machine manufacturers and the fact that there would be United States importers who would wish to deal in such Japanese products.

Mr. Waterman, when he rewrites the letter for delivery or mailing to Mr. Gegauf, changes that paragraph 3 so as to omit any specific reference to the Japanese manufacturers. However, his meaning is quite precise. It is obvious that he is referring to the Japanese manufacturers and to the Japanese products in his paragraph 3.

The Court: Don't you think that this is what brought about the assignment of the Gegauf patent to Singer? The [fol. 275] principle of law, if I am correct, is that one who is a mere licensee may not file suit for infringement.

Mr. Elkins: That's right, your Honor.

The Court: So that if there were machines brought into the United States embodying or copying the Gegauf invention, Singer, under its license agreement, could not bring a suit for infringement.

Mr. Elkins: That's right, your Honor.

The Court: And likewise under the Harris application, Gegauf could not bring a suit to enforce that, for infringement of that.

Don't you think it is that principle of law that brought about Singer's desire to secure an assignment of the patent so that it could assert both the Harris patent and the Gegauf patent against importations, as the owner of the patent and not as a licensee? Wasn't that the idea behind Singer's mind, which has to be assumed because these men are men skilled in the light of patents? To the average innocent, unknown person in the field, you might put a sinister interpretation upon this whole thing, but when you view this, that is, with that legal principle in mind, that one who is a licensee cannot sue for an infringement, isn't that what [fol. 276] prompted this arrangement?

Mr. Elkins: It is clear, your Honor, that there was a reason for the conspiracy as we allege it and the conspiracy as we allege it is—I will cover your Honor's question, but the conspiracy as we allege it is that these patents, Harris's patents together with whatever other patents might issue from the Singer applications would be grouped in Singer together with the patents that resulted from the Gegauf applications, and that the purpose of that was in order to give to the group patents a force and an effect that they would not have standing alone.

Certainly Singer, being the owner of the Harris patent, could not sue on a Gegauf patent, and Gegauf, being the owner of the Gegauf patent, could not sue on the Harris patent, which is merely another way, to my mind, of saying that each one had a particular and precise patent monopoly, which was covered by the four corners of their patents, and that the benefit of any patent pool or the benefit of grouping

patents in one is exactly to overcome what your Honor has described, to what your Honor has described is, I submit, the patent law of the United States.

[fol. 277] One patent entitles you to one patent monopoly, and one of the evil effects, as frequently stated by the courts, is that the idea of grouping patents in one with the understanding that that one will use them in order to exclude a particular competitor or type of competitor is that as a result of the grouping he then has a patent power which he would not otherwise have had, and I think that there is one case that puts it almost in those words.

. . . . . .

[fol. 278] Mr. Pettit: Your Honor, may I just interpose, because there was something said here which I think is quite misleading and is quite important.

He has not pointed out—and I think he should point out—that the Harris patent cannot possibly be infringed without infringing the Gegauf one.

The Court: You have said that at pretrial hearings, and I have that in mind, but you just make a little note of it when it comes your turn. Put it on your yellow pad, if you will.

. . . . . .

[fol. 279] Mr. Elkins: We agree, incidentally, with what Mr. Pettit has to say about the coverage of the Gegauf one patent and the coverage of the Singer-Harris patent.

We were discussing Government's Exhibit 44, which is Waterman's letter to Mr. Gegauf, and, as we pointed out, Mr. Waterman for some reason in the third paragraph of this letter which, as we say, was copied from the proposed letter of Mr. Stanford, changed paragraph 3 to omit any specific reference to Japanese manufacturers or U.S. importers dealing in the Japanese machines. His paragraph states:

> "When I had the pleasure of meeting you last fall, we had some discussion relative to the procedures that might be followed to enforce the patents referred to in the first paragraph of this letter"—(we might add here

that they are the United States Harris Reissue appli-
[fol. 280] cation and the Gegauf application)—"when issued against infringing manufacturers who primarily are manufacturers in other countries seeking markets in the United States and more and more throughout the entire world. These manufacturers are bringing out a large variety of ornamental stitch machines which would appear to come within the terms of claims which may be awarded in the United States with respect of the aforementioned Singer and Gegauf patents.

"A proper enforcement of these patents may make it necessary to instigate patent suits against each of the importers in the United States of whom there will perhaps be many. I think you will agree with me that neither one of us alone can protect himself most effectively. In our discussion we deferred any further action until the application might have progressed further in the Patent Office."

In this paragraph Mr. Waterman is referring to the negotiations between Singer and Gegauf that occurred in the fall of 1956, and, as we see in the last sentence of that paragraph, those discussions were deferred until the ap-
[fol. 281] plications might have progressed further in the Patent Office.

The Court: And you think the omission of Japanese manufacturers from this letter as finally written springs from a consciousness of guilt rather than from a regard for delicacy of expression?

Mr. Elkins: I do not believe, your Honor, that it is because of a delicacy of expression, and we believe that it is through a consciousness of guilt and perhaps an additional reason to which we will now get.

We may direct your Honor's attention to the first sentence of the Waterman letter in which, referring to his conference with Gegauf, he says:

"When I had the pleasure of meeting you last fall, we had some discussions relative to the procedures that might be followed to enforce the patents referred to in the first paragraph."

As your Honor will see from these documents, Mr. Gegauf is patent-wise, he is rather knowledgeable, and consequently it is clear that if Mr. Waterman merely told Mr. Gegauf that a suit on a patent was possible in the courts of the United States, such a statement would be ridiculous, it would not deserve a place in their conversation, and it would not [fol. 282] deserve a place in this letter.

We submit, your Honor, that when Mr. Waterman here talks about procedures that might be followed to enforce the patents referred to, he is indeed, referring to something in addition to a patent suit in a United States court, and the only other procedure that comes to mind is a procedure before the United States Tariff Commission.

I know of no other procedure involving a patent which could possibly be the subject of a conversation between Mr. Waterman and Mr. Gegauf as set forth here, and in relation to that we show or intend to emphasize in subsequent documents a consistent use of phraseology which, to our minds, is not consistent with merely bringing patent suits, and, as we hit that phraseology in memoranda and in letters, we will direct your Honor's attention to it.

It might be that there is some other construction for this language of Mr. Waterman, of course. We suggest that the reason why he omitted a specific reference to the Japanese, even though he has referred to them expressly in previous documents, is because here he wants to say something special about it, and through some consciousness of guilt [fol. 283] or some discomfort he decides not to state it in words that could be readily understood by a casual reader, but they are going to be understood by Mr. Gegauf inasmuch as he begins the paragraph with a specific reference to "our meeting of last fall, during which we had some discussion relative to the procedures that might be followed to enforce the patents referred to."

We do not say, your Honor, that that is definitive and that your Honor can go from there into a finding having to do with proceedings before the United States Tariff Commission, but we believe that that is on the way, and we will refer in subsequent documents to language which we think reinstates that.

The previous letter of Mr. Waterman to Mr. Gegauf is

answered by Mr. Gegauf in his letter of September 17, 1957 which is Government's Exhibit 45. This letter states:

> "Thanking you for your letter of September 12th, I am pleased to reply by return mail that I am looking forward to your visit in October for discussion either in Zurich or Steckborn regarding the mutual enforcement of our United States application No. 358,377 and the Harris Reissue against infringing products of the [fols. 284-285] foreign manufacturers."

We would like to note, your Honor, that Mr. Waterman, due to his oblique references to the Japanese in the previous exhibit, now has Mr. Gegauf of Switzerland referring to the Japanese manufacturers as "foreign manufacturers."

The Court: He is taking the cue.

Mr. Elkins: I presume so. And, your Honor, the significance of the document is the understanding here of Mr. Gegauf that the discussions under way between it and Singer involve mutual enforcement of his United States patent application and a Singer application against, we say, Japanese manufacturers.

. . . . . .

[fol. 286] The Court: Gegauf wrote Waterman in Exhibit 33, September 3, 1956——

[fols. 287-288] Mr. Elkins: Yes, your Honor.

The Court: —in which Gegauf said to Waterman "We agree that something should be done against Japanese competition in your country and maybe South America and are therefore looking forward to your early reply."

Mr. Elkins: That is right, your Honor.

The Court: So there is no occasion for Waterman to be squeamish about referring to Japanese competition at all, and this sinister aspect that you apply to this I do not think is supported by the prior documents.

. . . . . .

[fol. 289] The next exhibit is Exhibit No. 49, your Honor, and it is a letter to Mr. Lightner from Mr. Waterman. At this time Stanford and Waterman are negotiating with

[fol. 290] the Gegauf people, and the only part that we want to point out to your Honor is the final paragraph in which Mr. Waterman states: "Their patent lawyer and ours are to get together shortly, and as it now stands, to proceed to finalize the terms of the agreement in accordance with our discussion of yesterday. It may be that there will be some questions raised which will have to be clarified through correspondence after my return to New York, but I would say that as of now it looks as though agreement—if not already entirely reached—can be arrived at in a reasonably short time. I hope to hear by next Tuesday at Frankfort further particulars concerning the attorney's actions toward the finalization of the agreement."

The only significance of that, your Honor, is that the patent attorney referred to is Mr. Kirker; that these negotiations in October, 1957, have not been completed; that Mr. Waterman is now going to leave Zurich, or Switzerland, and he is going to Frankfort, and that he will hear later on from Mr. Kirker as to the development of the negotiations towards the finalization of an agreement.

Exhibit 50, your Honor, is a cable from Waterman in [fols. 291-292] Frankfort to Mr. Stanford of the Singer Patent Department, and in this letter we say that Mr. Waterman is indicating that now Mr. Kirker is negotiating with Gegauf on behalf of Singer, and that Mr. Waterman in Frankfort is receiving from Mr. Kirker various reports and Mr. Kirker in turn is receiving instructions from Mr. Waterman.

Now the first page of this cable sets forth three points raised in the negotiations. It reads:

> "Kirker Advises of Latest Three Points Put Forward First, 125,000 Single or 25000 Yearly Latter for Three Years Certain But Believes Half These Figures Might Be Accepted"

That relates to the pricing—the price negotiations that are going on between Mr. Kirker and Gegauf.

. . . . . .

[fol. 293] On the next page, page 3, Mr. Waterman continues:

> "Adain Emphasized for Kirker to Tell Willi that Application and Division Is in Our Opinion Leak Standing Alone"

Now, your Honor, I see that opposing counsel has suggested that we were reading this as saying "leak" when as a matter of fact there is a "w" running around some place. The copy—my photostatic copy of the cable, if it has a "w" over the "l", it is almost escaping my attention. I can see a bit of a blur there.

However, we say that the document says "leak", and we say that the idea presented is that the Gegauf 1 patent, as it ultimately came to be called, together with the Gegauf 2 patent, if put side by side, would present a pretty good barrier, and that one without the other would present a leak, and as we said the other day, we construe this as meaning "leak" in the patent wall, and it is our position——

[fol. 294] The Court: Did you notice that on the first page of this telegram there is a typographical error in the spelling of "divesional"—the "e" where there should be a "i"?

Mr. Elkins: Yes, your Honor.

The Court: Is that a mistake?

Mr. Elkins: It is a mistake, your Honor, which is——

The Court: You concede it is a mistake?

Mr. Elkins: I can see it is a mistake.

The Court: You concede that?

Mr. Elkins: I concede that, and I concede that I can see it, your Honor.

Now your Honor, the telegram that——

The Court: Did you see that on the second page of the telegram there is a second typographical mistake in that the word "devisions" has a "e" after the "d" instead of a "i"?

Mr. Elkins: Yes, your Honor.

The Court: Isn't it quite likely that finding two typographical mistakes, that this "l" should have been a "w"?

Mr. Elkins: No, your Honor. If I were to go over——

[fol. 295] The Court: Do you see, for instance, not two but another one on the third page of the telegram, in the

word on the top line "again" which is spelled "ad" instead of "ag"?

Mr. Elkins: I see that, your Honor.

The Court: I haven't gone over this telegram with the care that I would as a prosecutor, but just from a cursory reading I note three typographical errors.

Mr. Elkins: Yes, your Honor.

The Court: All right. If my grandchildren handed this in in a spelling class they would have at least three words marked wrong—and most likely four in spelling.

(Laughter)

Mr. Elkins: Then it would also appear, your Honor, that your grandchildren, if I may use your parallel, had about 120 words spelled exactly right.

(Laughter)

The Court: That 97 per cent accuracy is quite characteristic of my grandchildren!

(Laughter)

[fol. 296] I point this out not facetiously but seriously, seriously. Frequently in telegrams, cablegrams especially, where they are sent from foreign countries, words are misspelled.

Mr. Elkins: All right. If I may just comment on this for a moment, your Honor——

The Court: But you did comment on the fact that Gegauf was still looking for money.

Mr. Elkins: I will be happy to, your Honor. We do not contend that Gegauf is willing to throw in valuable property here, into this pool, without receiving some monetary consideration to boot, and it does not, we say, either add or detract from the government's position.

From what we see and from what you will see of the documents and various other evidentiary material, I am quite sure that we would all agree that Gegauf would be foolish to join a partnership in which he received no monetary consideration, in addition to the terms of the partnership agreement, in return for his applications.

The Court: It is the government's contention that they

formed this partnership when they made this agreement, the written agreement, some months before.

Mr. Elkins: April 14, 1956. Your Honor, if I may, we [fol. 297-302] do not say that the whole conspiracy bloomed on April 14, 1956. It has been our position that the essential phase and the principal thrust of the conspiracy had actually to do with the grouping of the patents in Singer so that Singer, for the benefit of itself, Vigorelli and Gegauf, could use those patents here in the United States to limit or exclude competition from United States importers of Japanese machines. That is the principal thrust.

And now, in addition to that, we say that in the early stages of their negotiations, Singer and Gegauf entered into an agreement which had an effect on the patents or which might have an effect on the patents which ultimately became grouped in Singer and that that was by virtue of his agreement by which each agreed not to do anything in any country which would narrow the claims of the other.

Certainly at that time, your Honor, at the time of that agreement, April 14, 1956, the conspiracy, as we believe it ultimately established, was not fully formulated as of that time.

• • • • • • •

[fols. 303-312] New York, May 8, 1961, 10:30 A.M.

• • • • • • •

[fol. 313] The Court: What I want to find out is this: I want to find out the theory of your case here. I have great difficulty finding it out—maybe entirely due to me.

Do you contend here that although there was nothing unlawful in and of itself in the acquisition of the Gegauf patents by Singer, that it becomes unlawful because they used a lawful means to accomplish an unlawful purpose? Is that your position here?

Mr. Elkins: I believe that that fairly well states it, your Honor. We do not say that the mere acquisition of a patent is unlawful.

• • • • • • •

[fol. 314] The Court: So the government's position here is that by doing a lawful act for an unlawful purpose they violated the law; is that the government's position?

Mr. Elkins: Yes, your Honor, and I always——

The Court: And the lawful act is the acquisition of the Gegauf patents by Singer which became unlawful because of the purpose for which they were acquired.

Mr. Elkins: And the fact that they were part of a conspiracy, your Honor, which is what you say, I think.

The Court: Which is that the conspiracy was designed to accomplish an unlawful purpose.

Mr. Elkins: That's right, your Honor.

The Court: Now then, the unlawful purpose that you claim was to be accomplished by the doing of a lawful act was that they intended to assert these Gegauf patents along with their own to prevent Japanese importations.

Mr. Elkins: Right, your Honor.

The Court: That is your case.

Mr. Elkins: That's right, your Honor.

• • • • • • •

[fol. 315] Exhibit 52, your Honor, is a letter dated October 25, 1957, from Mr. Kirker to Mr. Stanford, and this states:

> "Please find below a resume of our various telephone calls with Mr. Willi, concerning the above case:
>
> "Gegauf filed some time ago a divisional application for a part of the subject matter of the above U.S. patent application. The contemplated agreement must relate —according to Mr. Gegauf's point of view—to the basic application only, in its present form. In other words, the divisional application will not be included in the agreement.

[fol. 316] We replied to Mr. Willi that certainly, such a condition will represent a serious obstacle to reaching an agreement. . ."

We might point out that previously, as it indicated by this document, Mr. Kirker had conferred by telephone with Mr. Waterman, who was in Frankfort at that time, and that Mr. Waterman at that time instructed Kirker to point out to Mr. Gegauf that in the opinion of Singer the basic applica-

tion and the divisional application just referred to were, standing alone, weak.

The letter goes on at the bottom of the page and states: "We asked Mr. Willi"—who, incidentally, is patent attorney for Gegauf—"why Mr. Gegauf wished to keep for himself the original application since, at another time, Mr. Willi said that Mr. Gegauf is not very interested in said invention as regards the U.S.A. Mr. Willie answered that certain European companies are highly interested in the subject matter of the divisional application and that Mr. Gegauf thinks he could sell said divisional application to them. We replied that this represents probably a supplemental difficulty for reaching an agreement with Singer.

[fol. 317] "A second point raised by Mr. Gegauf was that he wished to be informed when Singer intends to introduce a legal action against a European company, and that such an action could be introduced only after Mr. Gegauf has given his consent. We pointed out that it would be better to set forth the condition in another form, namely to include in the agreement the name of the companies which Mr. Gegauf has in mind, and to restrict said condition to such companies."

At the bottom of page 2, Kirker writes:

"Since in the meantime we had reported the situation by telephone to Mr. Waterman in Frankfort, we added that, for Singer, the problem was only to buy the whole thing, namely, the subject matter of the original basic application in the U.S.A., with all possibilities of divisions and continuations, namely including the divisional application filed by Gegauf, and that there was no question of making two separate agreements and two separate payments."

The Court: Would you orient me a moment so I could be on the right course here? We have talked of Gegauf Patent 1 and Gegauf Patent 2. Gegauf Patent 1, as I understand [fol. 318] it, is what is referred to here as the original application, is that right?

Mr. Elkins: Sometimes it is referred to as the basic——

The Court: No; in this letter. Is "Gegauf patent" the original application, or did it grow out of the original application?

Mr. Elkins: I would say that Mr. Kirker here, in using the phrase "original basic application," is referring to both inventions and that at one time both of those inventions appeared in the same United States patent application.

The Court: But that is the first application which includes two inventions.

Mr. Elkins: That's right, your Honor.

The Court: And the second application, which is described as the divisional application, which you have called Gegauf No. 2, that is only one of the two inventions disclosed in the original application, Gegauf No. 1.

Mr. Elkins: That's right.

The Court: Now would you tell me what the two inventions are, roughly, which are stated in Gegauf 1 and which one of those two was picked out in the divisional application, [fol. 319] if you can?

Mr. Elkins: Yes.

The Court: If Mr. Weinstein would prefer to do it, that is all right.

Mr. Elkins: I believe that we can do it to the extent that your Honor requested.

The Court: Just so that I know what this is all about.

Mr. Elkins: Yes. These built-in cam machines must have and do have a plurality of cams, a stack of cams. The configuration on the cams differs and the stitch design that is ultimately to be produced by the machine is in accordance with those configurations. The intelligence of the cam, as they refer to it, is taken off by a follower and it imparts the intelligence to the needle bar.

In Gegauf No. 1 there are provisions for a stack of cams with a single follower, the single follower having the ability to engage any one of the cams, and that is done by the operator through a dial or a knob on the outside of the machine.

Gegauf No. 2 differs from that in that in Gegauf No. 2 there are a number of followers, one, indeed, for each cam, so each cam has its own particular follower, and the oper- [fol. 320] ator engages one cam or one follower with a

cam. Always that follower will engage the same cam. So that the simple difference is that Gegauf No. 1 provides for one follower having the ability to engage any one of a number of cams, and Gegauf No. 2 provides a follower for each cam.

The Court: And were both inventions included in the original application?

Mr. Elkins: That is my understanding. That is what it appears.

The Court: The claim with one follower and the claim with a multiple number of followers, one for each respective cam.

Mr. Elkins: That is my understanding, your Honor.

The Court: And when you speak of a division, you mean that the one follower was not included in the second application; it simply included a claim for an invention based upon multiple followers, one for each respective cam, is that right?

Mr. Elkins: I believe so, your Honor, if I can just say this: the divisional claim referred to is the plurality of followers, one for each cam. When they speak of carving [fol. 321] a new application out of the basic application, the thing that is carved out is Gegauf No. 2, a number of followers, one for each cam.

The Court: All right.

* * * * * * *

Mr. Elkins: That was not involved here, your Honor. What they are negotiating for here is the outright sale of these patent applications from Gegauf to Singer.

[fols. 322-324] The Court: So that Singer could itself file an infringement suit without naming Gegauf as the plaintiff.

Mr. Elkins: That would be one effect of it.

The Court: That would be the main effect, would it not?

Mr. Elkins: I am not entirely sure of what your Honor means by the "main effect."

The Court: Almost the only effect of any substance.

Mr. Elkins: As far as what your Honor says as to a particular patent and the proceedings involved in suing

upon it, it is all true, but I don't want to appear by agreeing with your Honor that we agree to anything other than that, concede anything other than that.

. . . . . .

[fol. 325] Exhibit No. 56 is a letter dated November 18, 1937. It is from Mr. Kirker to Mr. Stanford and it relates and gives certain details of Mr. Kirker's negotiations with Mr. Gegauf.

. . . . . .

[fol. 326] On the second page of this exhibit, Mr. Kirker writes: "Mr. Gegauf explained first that he has no objection against the idea of making an agreement with Singer in order to stop as far as possible Japanese competitors [fol. 327] on the U. S. market but he added that such an agreement might be reached under certain conditions only" —and we say it is obvious that Mr. Kirker did not get any ideas of his own in relation to an agreement between Singer and Gegauf, in relation to the grouping of these patents in order to stop Japanese competitors in the United States market.

On the same page, your Honor, in the paragraph marked "c" Mr. Kirker writes: "Mr. Gegauf explained also that the sum of $125,000 he asked for selling his applications No. 358,377 and the new application to be filed shortly, is cheap, and he could not go substantially lower. He explained further that if, instead of selling the application to Singer, he were to grant a license for said inventions, he would get every year many times more than the single payment of $125,000 he proposes. He added that around him everybody was against the proposal of $125,000 and advised him to ask for a much higher sum (we understood that these people around him were his family and some executives of his company). He even said that Mr. Willi told him this sum of $125,000 was low. Mr. Willi apparently did not react."

The significance of that, your Honor, is to demonstrate that inasmuch as a patentee is entitled to remuneration for [fol. 328] his patents, he is expected to proceed in such

fashion as will get him such remuneration, and that Gegauf hereafter is actually transferring his patent application to Singer for a consideration less than he believes he would be entitled to or would receive if he licensed instead of selling to a particular company.

On page 3, your Honor, in about the fifth paragraph, I believe, Mr. Kirker states: "During the discussion, we pointed out that it was right to compare what Bernina could get for a license to what Singer would pay for being in a better position for acting against common competitors. We presented the view that what Singer was prepared to pay is to be considered as an insurance premium for bettering its legal position and not as the equivalent of a license.

"To this remark Mr. Gegauf replied that we were right but that by giving Singer the possibility to stop the Japanese competitors in the U. S. A. there is a serious drawback for Bernina, viz. if Japanese competitors can no longer sell their machines in the U. S. A., they will try to sell them in Europe. We answered that if Bernina's pat-[fol. 329] ents in America permit Singer to stop the Japanese competitors, the corresponding European patents will permit to act exactly in the same way in Europe. But Mr. Willi and Mr. Gegauf, Sr. confessed that unfortunately the position was not so good in Europe."

We quote that, your Honor, for the purposes of demonstrating that this is not an ordinary sale of a patent or patent application from one person to another; that in these discussions here, referring from time to time to price, both parties are pointing out that very fact indeed, that this is not an ordinary assignment of patents from one to another, and that the basic idea involved, or one of the basic ideas involved, is that one purpose is to put patents in Singer for what we term the conspiratorial purpose.

The Court: You do not think that these hard-hearted and hard-headed—perhaps you might say hard-hearted, too—that these hard-headed businessmen were negotiating in a vacuum and were not fully acquainted with the realities of the situation—that there were certain national manufacturers of various countries who were in the field—that

the one that offered the strongest threat was of the country named, but that did not mean that they would be the only one to attempt to import by way of bringing in and intro- [fol. 330] ducing infringements on the patent.

These are practical businessmen, and they have sized up the whole market situation. Singer acquired these patents in order to assert them. Naturally it had to assert them against competitors. Who else would bring in machines which would be infringing but these competitors? And amongst those competitors happened to be the Japanese.

It is perfectly proper, as I see it. That is what has troubled me with this case from the very beginning—to acquire a patent in order to assert it against infringements. The law gives you that right to do it. You acquire it on the best possible terms you can. If you have to give a grant back of a royalty-free license, you do so, but you have to protect yourself and protect your industry, and you use a lawful means for a lawful purpose, and that is not a violation of the law.

All right, we will go ahead.

Mr. Elkins: Could I spend just a moment on that?

The Court: Surely.

Mr. Elkins: What we say is the violation, your Honor, rose out of the idea of grouping patents in Singer in order [fol. 331] to carry out the agreement between Singer and Gegauf which, as we say, relates to the exclusion of the Japanese products.

Now there is more power in five patents than there is in two. There is more power in a plurality of patents, and that is the evil of grouping patents in one ownership for a conspiratorial purpose.

The Court: Are you changing your position of half an hour ago when you told me that you concede that there was nothing unlawful in and of itself in Singer acquiring these Gegauf patents——

Mr. Elkins: Your Honor——

The Court: —that that was a lawful act?

Are you changing your position now?

Mr. Elkins: We are not changing our position now, your Honor. The question in and of itself raises certain loose ends. We are not dealing, as a practical matter, with an

acquisition in and of itself. We are dealing here with a conspiracy, with an agreement, an unwritten agreement, a conspiracy between Singer and Gegauf whereby they agreed to group patents in Singer for the purpose of enabling Singer to launch a patent attack against persons dealing in Japanese machines in the United States.

[fol. 331a] We say it is unlawful because such a grouping automatically, conclusively, gives to each of the patents a power that they did not have, as we contend Waterman meant when he said "standing alone."

The Patent Office, in granting a patent, grants a monopoly that covers the face of that particular patent, and we say that by grouping patents, that each of the patents thereby takes on more power than they would have standing alone.

[fol. 332] The Court: What is the grouping of patents that you claim was accomplished here which should not have been accomplished? Whose patents? Of Singer's with Gegauf?

Mr. Elkins: That is right.

The Court: Singer, without Gegauf, could not have stopped Japanese importations, could it?

Mr. Elkins: Yes. Singer had, your Honor, the three pending United States applications here in the United States: One, the Harris Reissue was, during the time of these negotiations here, about to issue, and they also had two others——

The Court: I asked you a question, and I do not know if you realize the significance of your answer.

Was Singer in a position, prior to the acquisition of the Gegauf patents, to stop the so-called infringing Japanese machines?

Mr. Elkins: Singer could have brought a suit involving, after 1957, on its Harris Reissue patent, a patent suit which, as I say, would cover all of the machines coming in from Japan.

The subject matter of the machine which corresponded to the Harris Reissue patent was a different subject matter [fol. 333] than that covered by Gegauf 1.

The Court: Don't you charge here that the wrong that Singer has committed is not the assertion of its own patents against alleged Japanese infringing machines but is the assertion of the Gegauf patents alone?

Mr. Elkins: No, your Honor.

The Court: I understood that to be your statement at the very beginning of the case.

Mr. Elkins: The conspiracy, your Honor, involved the idea of grouping patents in Singer so that ultimately Singer would have Johnson, the Harris Reissue, Gegauf 1, Perla and Gegauf 2. It involved the idea that these patents now grouped in Singer would be used by Singer to exclude, to the extent that they were able to, the Japanese imports.

The Court: But you have not alleged that acquisition of the Harris patent, the Johnson patent or the Perla patent was unlawful.

Mr. Elkins: That is correct.

The Court: Or that those acquisitions were to accomplish an unlawful purpose.

Mr. Elkins: That is right, your Honor. Actually the——

[fol. 334] The Court: So that what you have presented here, as I take it, and as I have been understanding you, is that the wrong that Singer did was to acquire the two Gegauf patents so that they could assert them against Japanese importations; that prior to the acquisition of the Gegauf patents they were not in a position to stop Japanese importations by alleging infringement of those patents which they themselves then owned.

Didn't you say that that was your case and that was your charge here?

Mr. Elkins: We say, your Honor, and we have used as frequently as we could, the idea of grouping or pooling patents in Singer. The two patents acquired were, as you say, your Honor, to which we attach significance, Gegauf 1 and Gegauf 2. Gegauf also had pending United States patent applications.

We have read from documents, your Honor, in which Gegauf said "We are looking forward to a discussion involving the usual enforcement and our patent".

We will hit upon documents that mention it again. We have presented documents in which Singer, in communicating with Gegauf, in the midst of these negotiations, which, as we say, had as a purpose the grouping of the [fol. 335] patents, September 12, 1957, which as to the exhibit that we are presently reading from, was about two months before—Singer points out to Gegauf that its United

States Harris Reissue application was about to issue. Singer says "We also anticipate within the near future that there will be issued to us a number of other United States patents relating to ornamental stitched sewing machines"—and I am reading from Government's Exhibit 54.

We still say, your Honor, that it is—and we believe we have been as consistent as we know how, but it is the grouping of the patents in Singer, the pooling of the patents in Singer, that the patents involved were those acquired, Gegauf 1, Gegauf 2, Singer's other patents to which it referred in the exhibit, from which I just quoted, for the Harris Reissue, and what ultimately became the Johnson patent and what ultimately became the Perla patent.

Shall I proceed, your Honor?

The Court: Yes.

Mr. Elkins: Some time after the receipt of the letter just referred to from Mr. Kirker, the executives of Singer decided that Mr. Stanford had best go to Switzerland and [fol. 336] attempt there to finalize an agreement with Gegauf.

Exhibit No. 57 is a memorandum prepared for the purpose by Mr. Lightner, an executive of Singer, who at the time was president of Singer.

In Exhibit No. 57, which is the covering letter to the memorandum, he states "I am distributing this rough draft with a view to helping to get policy formulated for Mr. Stanford on Friday and I would be obliged if each of you would try to read this over and be prepared with your own suggestions as to any different sort of procedure that you feel he might follow".

This memorandum was circulated to Mr. Kircher, vice president of Singer, Mr. Waterman, vice president, and Mr. Bruder, vice president—and a copy was sent to Mr. Stanford, and the communication was read and approved by all, according to the covering memorandum.

On the first page of the memoranda, which is dated November 29, 1957, Mr. Lightner states:

> "The main purpose of Mr. Stanford's trip will be to obtain such control of the Gegauf patent applications in the United States as will put us in a position to own and control it in order to get the very best patents and

bar import or United States production of mechanisms [fol. 337] which would violate these patents."

Here Mr. Lightner is talking of patents of Gegauf and he is using the plural—as indeed he should. It is two separate applications which will result in two separate inventions.

We note in this memorandum that it is fair to conclude—it sets forth the main purposes of the acquisition of the patents, and that if a purpose is not here, it just did not exist as a main purpose.

We notice as well as being interested in barring imports, that Singer, who, as we say, is the only manufacturer in the United States, also intends to buy them for the purposes as stated by Mr. Lightner, of preventing United States production of mechanisms which would violate these patents, these two patents.

So far as the Sherman Act is concerned, as your Honor knows, an exclusion of a competitor is no different then keeping a competitor out, and Singer being the only manufacturer here in the United States, is here keeping competitors out—at least of the machines covered by the patents in question—and that appears to be one of its purposes.

The Court: You say that that purpose is unlawful, that [fol. 338] is sought to be accomplished by the acquisition of a patent?

Mr. Elkins: Yes, your Honor. We say that the acquisitions of patents may result in an unlawful monopolization, or we say that the acquisition of patents may be an attempt to monopolize—that is true, your Honor.

At the bottom of the page Mr. Lightner writes:

> "Evidently, Gegauf has stiffened on price and we may have to pay as much as about three times the original figure. While this may seem high, yet over the years ahead the payment of such a price may well be justified by our having the ability to stop import of very low priced multi-cam machines, not only as a result of the help that we would have in the U.S. market in preventing such import, but also because inability to enter the U.S. market may discourage some people from entering the field, and raise unit costs in

the case of those who do produce such machines for other markets."

At the bottom of that page he continues, after the memorandum note that Singer decided that if possible it should try to get Gegauf to refuse to give any licenses to any [fol. 339] European manufacturer—and Mr. Lightner continues: "While these efforts must be made and while one might expect that for $100,000 or $125,000 Gegauf would give this added protection to us, yet if we are not successful in that endeavor, it would seem as though the ability to exclude this kind of Japanese machine may be worth even this high a price.

"If Bernina is to continue to have the right to send machines into the United States and if they consider that right important, they may very well see the wisdom of enabling us to stop other imports from Europe as well as those from Japan."

We say that it is clear from that, your Honor, as reflected also by other documents, that the idea of the assignment which exists mutually between Singer and Gegauf is the use of the patents to exclude the Japanese products—and that that certainly is the full mind of Mr. Gegauf.

The Court: It speaks of "other imports from Europe as well as those from Japan".

Mr. Elkins: That is right.

The Court: I see.

Mr. Elkins: Indicating that——

The Court: Indicating that they want to assert it against [fol. 340] more than merely Japanese, eh?

Mr. Elkins: Yes, your Honor—and if I may say so, indicating that the essence of the conspiratory is the exclusion of persons dealing in the Japanese machines, and that they are here trying to prevail or thinking of prevailing on Gegauf to allow them to use the patent against Europeans as well.

On page 4 of this memorandum Lightner writes: "Mr. Bruder offered the suggestion that Singer might agree to taking a certain number of machines and marketing them in the U.S., this suggestion being put forward with the idea that it might help to eliminate licenses to anybody

else and also eliminate Bernina imports to anyone other than ourselves."

• • • • • • • • •

At the bottom of the page, Mr. Lightner continues, speaking of this suggestion of Mr. Bruder, and states "In determining whether to broach this idea in the course of [fol. 341] negotiations, it must be remembered that getting control of the patent is the main objective, with the elimination or curtailment of European import as an important but secondary objective, and that with respect to these objectives, the idea of our purchasing any Bernina machines to be supplied to us under our own chosen trademarks and in our chosen color • • • and possibly with changes in design, for which we would pay, is an idea that should be utilized only if it appears to be likely to help the negotiations."

Exhibit 58, your Honor, is the agreement that was entered into between Singer and Gegauf, and it provides at the bottom of the first page "Whereas, Gegauf has as of the day and year written above assigned to Singer, its successors and assigns, for the territory of the United States of America, the entire right, title and interest in and to United States patent application Serial No. 358,377 filed May 29, 1953, and to the inventions disclosed therein and to an application divided out of said application Serial No. 358,377 and filed at an unknown date just prior to the present agreement, or about to be filed, and in and to any and all United States patents which may be granted therefor and in and to any and all extensions, divisions or [fol. 342] reissues of such patents, and Gegauf is desirous of acquiring therefor, in return for the territory of the United States of America, a non-exclusive, non-transferable and royalty-free license to sell sewing machines as disclosed in the said United States patent applications and made in their own factory in Switzerland".

• • • • • • •

[fol. 343] Government's Exhibit No. 62 is dated December 13, 1957, to Mr. Kircher, vice president of Singer, by Mr.

Stanford—with copies to various other executives of Singer. Mr. Stanford states:

"Enclosed is the original and 4 copies of a memorandum setting forth in narrative form the events that transpired during my recent trip to Switzerland.

"If my memory serves me correctly, these facts are set forth in the order of occurrence. The object is to try and give the reader a clear understanding of when and how the offer made by Bernina came about."

[fol. 344] On the first page of the memorandum, in the second paragraph, Mr. Stanford writes:

> "At 2:30 I visited Mr. Kirker's office and questioned him minutely about everything that had occurred during his recent negotiations with Mr. Gegauf, also as to any side remarks that Mr. Gegauf may have made during the negotiations that Mr. Kirker had with him. After quite a lengthy discussion and a reexamination of our original agreement with the Bernina Company, it was concluded that the best way to handle this matter was to call Mr. Willi, the patent counsel for Bernina, at his office in Zurich, and request that he contact Mr. Gegauf saying that I was in Switzerland and that Mr. Kirker and I were quite anxious to have a conference with Mr. Gegauf as soon as possible and suggest Wednesday as the day of the conference."

We notice, upon the arrival of Mr. Stanford, he discussed with Mr. Kirker things that occurred during the Kirker negotiations with Gegauf and, as Mr. Stanford says, he "questioned him minutely about everything." He goes on to say that he even questioned him as to "any side [fol. 345] remarks that Mr. Gegauf may have made."

One of the previous exhibits stated that during these Kirker-Gegauf negotiations they started off with, as Mr. Kirker explained, "Mr. Gegauf explained first that he has no objection against the idea of making an agreement with Singer in order to stop, as far as possible, Japanese competitors in the United States market." Obviously Mr. Kirker filled Mr. Stanford in, if he had to, in relation to all of that material, and we will see that there is no dis-

avowal of this idea of an agreement between Singer and Gegauf pertaining to these patents.

On page 3, the last paragraph, Mr. Stanford goes on to state:

> "Rather than approach Mr. Gegauf as a humble petitioner with hat in hand, I immediately seized upon a statement made to Mr. Kirker, at a previous conference, to the effect that the Japanese ornamental stitch machines would be sent into Europe if they were stopped from being sent into the United States because Bernina did not have broad patent protection in Europe. I intimated that this was a surprise to us for we [fol. 346] expected Bernina to have patents in Italy, Germany and Switzerland which would fully protect Bernina and Singer, and that it was very difficult for us to appreciate that it was only in the United States that they expected to obtain any substantial patent protection. I continued to drive this point home and asked if they knew of any publications, facts or machines of which we had no knowledge. I then asked them such questions as:
>
> "Why no action had been taken in Italy in reference to their Italian patent;
>
> "What set of circumstances caused them to abandon much of the protection that they should have been able to obtain in Switzerland; and
>
> "Whether or not their patent application which had been published for opposition in Germany was being opposed by a third party."

Our only point in referring to that, your Honor, is that Stanford, as a representative of Singer, is indeed talking with Gegauf and asking Gegauf for something—that is what would appear on the very thin—surface—and that he [fol. 347] is, indeed, a petitioner with hat in hand, as he put it, and yet we understand or we see here that he took the offensive, became aggressive in his negotiations with Mr. Gegauf, pointing out that it was a surprise to us that Gegauf patents were not, in the opinion of Gegauf, sufficient to stop the Japanese over there to the extent that they could be stopped in the United States, for, he says, "We

expected Bernina to have patents in Italy, Germany and Switzerland which would fully protect Bernina and Singer," and he continues, he says, to drive home the point. Obviously there is something there between Singer and Gegauf which relates to Gegauf assisting Singer in Europe in relation to patent suits.

On page 6, the last paragraph, he writes:

> "Young Mr. Gegauf further argued that if the United States patent were assigned to Singer and if Singer was successful in stopping certain types of Japanese ornamental stitch machines from being shipped into the United States, it would merely divert such machines into Europe and as a consequence Bernina would have still more competition in Europe, [fol. 348] and as a result of the increase in competition in Europe, Bernina, would have a substantial loss of business. To this argument I took the position that the United States was really the first line of defense and that if the Japanese were permitted to flood the United States market with ornamental stitch machines of the Bernina or Class 401 type they would become so strong and production would be so great that they would enter the European market in a stronger position. I further stated that protection was to be obtained in some of the foreign countries by Gegauf and it seemed that a greater risk would be involved if they did not permit Singer to try and reduce the importation of the multiple-cam machines into the United States."

We cite that material for the particular purpose of indicating that the United States is, as Stanford stated to Gegauf, the first line of defense, and the idea is presented there that, if the Japanese sewing machine industry is weakened or limited in one country, it would be weakened in other countries as well.

On page 7, Mr. Stanford continues and says:

> [fol. 349] "Mr. Gegauf's daughter put in her appearance shortly before this time and she and her father finally persuaded her brother that possibly it would be better to give Singer an opportunity to try to cut down

the importation of multiple-cam machines into the United States."

On page 9, if your Honor please, in the fifth line down, Mr. Stanford continues and says:

"Throughout the entire negotiations I had tried to drive home the point that the Brother Pacesetter machine" (and here we would like to say parenthetically that that is a Japanese-made machine) "was a free-arm zigzag machine and that Singer did not have a comparable free-arm machine to sell. Consequently, the Brother Japanese machine was in direct competition with Bernina and not with Singer. During the negotiations I continued to point out various ways that the competition in free-arm machines might be reduced as well as the competition in flat-bed machines and as a consequence Gegauf would be in a position to profit from this fact more than Singer."

[fol. 350] We mention that particularly as it points out that the Brother Pacesetter machine is not comparable to any Singer machine and that the particular benefit of any suits against the Brother Pacesetter machine would, according to this, inure to the benefit of Gegauf more than to the benefit of Singer. That is all in that document, if your Honor please.

* * * * * * *

[fol. 351] Government's Exhibit 66 is a referral slip from Mr. Waterman to Mr. Stanford. It attaches to it a letter to Mr. Waterman from Mr. Gegauf. The letter is dated July 25, 1958. This letter, on the first page, indicates that Mr. Gegauf recently had the opportunity to discuss the matter of Japanese imports in Europe with several direc-
[fol. 351a] tors of the Pfaff Company, and also with directors of other German sewing machine factories. He then goes on at the bottom of the page to say:

[fol. 352] "I told to these gentlemen that according to my opinion it will be very difficult to do anything against the Japanese, as long as the European sewing

machine manufacturers undertake everything to open the doors to the Japanese, especially as regards the supplies of automatic zigzag sewing machines similar to proved European constructions. Several European, especially German manufacturers, try with all means to bring to fall the patent applications of my company. Above all I mean the Bernina automatic. I hope to be able to induce those firms, which made interference against our application, to withdraw their interference under certain conditions."

Mr. Gegauf goes on to say:

"During a discussion with Mr. Heimann of the Pfaff Company he asked me whether I believe that also the Singer Company would be prepared to help that a further gaining ground of the Japanese machines on the European market be prevented in respect of patent rights. As it seems people know already that a patent arrangement was reached between the Singer Company and the Bernina and that friendly connections are existing between our Companies, I was asked to sub- [fol. 353] mit you the aforesaid question. I did not mention, of course, that you intend to proceed against the Japanese on the basis of your patents and ours, what happened already in the meantime. According to my opinion, the Japanese can be hit only if we succeed in preventing their manufacture of proved and well accepted constructions for reasons of patent rights. You are on the right way with your suit.

"I should be very glad to discuss this matter when you will come again to Europe and to know your opinion."

We say here that on the page 2 from which we have just read Mr. Gegauf not only infers an agreement between Singer and himself but expresses it pretty well. In speaking of the Pfaff Company, he stated that Mr. Heimann of Pfaff, which, incidentally, is of Germany, asked him whether he believed that also Singer would be prepared to help that a further gaining ground of the Japanese machines be prevented in respect of patent rights, indicating that

there is already such an agreement and that Mr. Heimann of Pfaff is looking for an agreement to take care of a further gaining ground.

He goes on on this page and says, speaking of his con- [fol. 354] ference with Mr. Heimann: "I did not mention, of course, that you intend to proceed against the Japanese on the basis of your patents and ours, what happened already in the meantime." Mr. Gegauf, when he says "What happened already in the meantime," is saying that it has happened since he had his conversation with Mr. Heimann of Pfaff, and he indicates, too, that at the time of this conversation with Mr. Heimann of Pfaff and before he was notified of the Singer suits against the Japanese, he knew—and, indeed, we say of course he knew—to use his words in speaking to Singer, that Singer intended to proceed against the Japanese on the basis of its patents and Gegauf's, and Mr. Gegauf, in stating it, states it pretty well, perhaps just about as well as we could. The difference is that coming from Mr. Gegauf it is not a mere allegation; it is an admission.

In Government's Exhibit 67 the Singer Patent Department indicates its appreciation of the idea of grouping patents, and Government's Exhibit 67 is a letter from the Patent Department to Mr. Waterman dated January 28, 1957, and it attaches a Patent Department report. On the first page of the report, in the second paragraph, it states:

> [fol. 355] "Steps were taken to strengthen Singer's patent position in the United States for multiple cam zigzag stitching machines by concluding an agreement with Fritz Gegauf A.G. of Switzerland, makers of the well-known Bernina sewing machine, whereby a basic United States patent application relating to such machines was assigned to Singer. Patents issuing on this application grouped with other Company patents should put Singer in a better position in any attempt to prevent others from importing into the United States multiple cam machines of the Singer class 401 type."

We say, your Honor, that all of that material indicates an agreement, a conspiracy, an unwritten agreement between Singer and Gegauf, and, indeed, we say that the material manifested even to obvious proportions, including,

as it does, even a statement from Gegauf himself after the assignment in which he describes the arrangement between Singer and Gegauf almost in legalistic language and, certainly, so as to parallel the allegations of the government here that this conspiracy involved a grouping of patents in Singer, the Gegauf patents transferred to Singer, grouped with their own patents, which, as Gegauf says, [fol. 356] would then be used to attack the Japanese product.

Now, as we understand it, the defendant says there is no unwritten agreement between the parties, no conspiracy between Singer and Gegauf. As we understand their position, they say merely that the only agreements are those that are written, those that can be hit with a brick, and that beyond that——

The Court: Those that were paid for in dollars and cents, with good American money, $85,000.

Mr. Elkins: For these patents?

The Court: No. The Gegauf agreement was bought and paid for at arm's length bargaining.

Mr. Elkins: They did pay, your Honor, $90,000 to Gegauf for the Gegauf patent applications with the understanding, as Gegauf just said in the document that I just read, that the patents of Singer and Gegauf now being in Singer would be used by Singer in launching patent attacks upon persons dealing in the United States with the Japanese-made machines.

That there is a conspiracy which covers those terms, we say, is made manifest and, indeed, obvious by these various communications between Singer and Gegauf and communications of an intra-company nature between the Singer officials that, after this assignment from Gegauf to [fols. 357-358] Singer, Singer, in accordance with that agreement, is required to use the patents it obtained from Gegauf together with its own in proceeding or in launching patent attacks against the Japanese.

In view of all of this written material, the existence, we say, of that agreement is quite open. Singer, if it did anything else, would not only be violating that conspiracy, it would, indeed, be guilty of a substantial act of treachery as far as Gegauf is concerned. Singer is required, as a result of all of the evidentiary material to which we

have referred, not to grant any license under a Gegauf patent to a company or United States importer dealing in a Japanese machine, it is required not to grant any such license under a patent which it has discussed with Gegauf to any person dealing in a Japanese-made machine, and, as we have tried to say before, the evil created is the grouping of the patents in Singer where each of them, according to the cases, takes on an extra strength which, standing alone, they would not have had.

* * * * * * *

[fol. 359] Mr. Weinstein: May it please the Court, your Honor, the first group of documents that I will address myself to are the documents which relate to what is generally referred to as the Messerschmidt transaction. The government believes that these documents are relevant to show the acts of a co-conspirator in acquiring patents for the use of foreclosing a competitor pursuant to the common design, namely, excluding Japanese-made machines. In this regard it is relevant to the charge of a conspiracy to restrain trade under Section 1 of the Sherman Act and to a conspiracy to monopolize under Section 2 of the Sherman Act.

In addition, this is an act of a dominant United States manufacturer which shows its attempt to monopolize which is accomplished by buying patents or attempting to buy patents for the purpose of excluding competitors. This, we say, goes to our allegation that the Singer Manufacturing Company has attempted to monopolize a part of trade or commerce in violation of Section 2.

In addition, there are certain other points that are clearly brought out by these documents. One is that Singer had as an alternative in its relationship with Messerschmidt [fol. 360] the opportunity to oppose Messerschmidt's applications in Europe; two, that Singer bought and attempted to buy other patents other than the Gegauf patents for the purpose of excluding Japanese competitors; and, three, these documents, I believe, conclusively show the aggressive nature of Singer in attempting to exclude competitors.

A reference to the statement of facts, your Honor, namely, Nos. 42, 43 and 44, indicates that in July of 1955 Singer was preparing to manufacture in the United States and Scotland its 319 machine which was the subject of its Perla

patent application. At that time Singer became aware of a similar Messerschmidt machine and Singer began searching for indications of a corresponding Messerschmidt patent application.

The first document, your Honor, is Government's Exhibit 69 which is a letter written by Mr. Stanford, head of the Singer Patent Department, to Mr. Adamson who was head of Singer in Germany. This letter is dated January 19, 1956, and Mr. Stanford states:

> "We are all well aware of how serious and complicated the patent situation is in Germany and most of the important industrial countries of the world. In [fol. 360a] Germany we have an opportunity to oppose the claims of applications before the application is finally issued. This is an advantage that we do not have in many countries."

[fol. 361] We merely introduce this document to show that there is an alternative to entering into agreements which would assure all broad claims. If a party is threatened with a serious patent position of an opponent in another country, he may well seek to oppose that patent.

The next document, which is dated March 15, 1956, written about three months after the previous document, is merely introduced to show that the 319 machine was similar in construction to the Messerschmidt machine and that the Perla German application owned by Singer had been held in abeyance by the German patent examiner. This is a letter from Mr. Stanford of Singer's patent department to Mr. Adamson of Singer Germany, where he states:

> "We would appreaciate it if you would contact Dr. Wiegand and ask him to please obtain any and all information possible concerning the possible filing by Messerschmidt of patent applications directed to sewing machines having multiple cams, any one of which may be selected to control the vibration of the needle bar.
>
> "This has been made more important by a recent [fol. 362] communication from the German patent examiner in which he stated that action on their Perla application S 46,580 (319 machine) is being held in abey-

ance because of a prior filed German application which he has before him."

The next document is Government's Exhibit 68 which was written during the last week of April 1956 by Mr. Stanford to Mr. Williams of Singer's patent department. This letter indicates, your Honor, that Mr. Stanford had found a Belgian Messerschmidt patent which appeared to predate Perla and Johnson, and he states on page 2 of this handwritten note:

"At least we appear to be ahead in the United States. We see the Messerschmidt people may be willing in Frankfort next week."

He continues on and says:

"With this knowledge, what should we do in the United States? Both France and Switzerland say they must have cylinder bed m.c. to compete."

Your Honor, m.c. there refers to multiple-cam machines. Then he phrases an important question:

"Does this make Messerschmidt a good buy?"

[fol. 363] And his closing comment, on the last page of this letter, your Honor, is:

"Belgium full of Japanese machines, all kinds."

Your Honor, I now refer to Government's Exhibit 28 to which Mr. Elkins has referred previously. I might add at this point that the transactions that I address myself to now overlap chronologically with the Gegauf transactions, so in some cases documents refer to both Gegauf and Messerschmidt.

This is a letter, your Honor, which is written on April 30, 1956, a few days after the letter I just read. The letter is from Mr. Stanford to Mr. Williams and Mr. Breen of Singer's patent department, and we offer this letter, your Honor, to show Singer's priority in the United States with

respect to the subject matter of the Messerschmidt patent application. He states:

> "Enclosed is the Belgian patent of Messerschmidt. Have finally concluded that they filed automatic cam feature on November 25, 1954. Topped again by a few days. Sho is hell, but it seems to me that we have them in the United States. Could be much worse."

He continues on, your Honor, and says:

> [fol. 364] "Enclosed also is a copy of drawing of Messerschmidt's recent Italian patent on feeding mechanism."

And towards the end of the letter he states:

> "Saw the Messerschmidt people today. They don't want to sell the sewing machine business."

And the concluding statement of the sentence is:

"Think we should push U. S. Perla 319 multi-cam application like hell. Do you agree? Bell has been believing they are ahead. They have term contracts with Bell and others."

I think a few things should be mentioned here, your Honor. Bell, as I understand it, relates to Bell Messerschmidt, a distributor of Messerschmidt in the United States at the time this letter was written.

I mentioned the fact that they say "Enclosed also is a copy of drawing of Messerschmidt's recent Italian patent on feeding mechanism."

The Messerschmidt patent applications, your Honor, in the United States and their corresponding applications and patents in Europe related not only to the subject matter of the 319 machine but also to the subject matter of using [fol. 365] a series of cams each with its own follower, not to control the needle bar or the zigzag pattern but to control the feed of the material through the machine. So in essence, Messerschmidt was prosecuting an application which could be said to conflict with Perla but also had claims going far

beyond anything Singer had patent applications on or was presently or contemplating manufacturing.

Your Honor, the next document is Government's Exhibit 71 which is another handwritten note from Mr. Stanford to Mr. Williams dated April 27, 1956. In this document Mr. Stanford states, and this was written from Europe:

> "I have given much thought to the Messerschmidt situation. It seems to me we should push the U. S. Perla case to the limit. If you agree, let us go. As far as I can see, Messerschmidt's filing date in Germany is November 25, 1954. I feel quite sure of this as we can establish our superiority in the United States.
>
> "While Messerschmidt said they were willing to be friendly and negotiate, it is my impression that they will do so only when they have a gun in their back. Anyway, I am not so sure we need them or that we [fol. 366] will wish to negotiate. Maybe we can push them out of the sewing machine game. They admit they have no time to give it but want to hang on. Apparently Bell has quite a contract with them."

Again, Bell refers to Bell Messerschmidt, the American distributor for Messerschmidt machines.

Later on in that note, just to indicate the corresponding negotiations with Gegauf, he states:

> "Had letter from Gegauf yesterday but he didn't say anything about assigning his U. S. application to us."

The next government exhibits are 72 and 73. In response to the question in Government's Exhibit 68 as to whether or not Messerschmidt was a good buy, Mr. Williams cabled Mr. Stanford twice on April 30, 1956. The first cable was Government's Exhibit 72, your Honor, and it reads:

> "Messerschmidt might be stopped in Germany and other countries by proper claims in applications corresponding to Vigorelli Italian Patent 507,862 filed September 29, 1953. This patent is first to show and claim two cams tracked by a follower means during a single stitching cycle."

[fol. 367] Apparently on the same date, your Honor, Mr. Williams again cabled Mr. Stanford:

> "Purchase of Messerschmidt for patent reasons only not justified if German applications of Gegauf and Vigorelli contain claims dominating Messerschmidt. Figures 9 and 17 of Gegauf Italian Patent 501,172 and all figures of Italian Vigorelli Patent 507,862 would support different coexisting claims dominating Messerschmidt."

Your Honor, at this date, April 30, 1956, Singer had already entered into a cross-licensing agreement with Vigorelli and had two weeks previously entered into its cross-licensing agreement with Gegauf.

Your Honor, is it convenient for the court to take a recess at this time?

The Court: Yes. We will return at 2.15.

(Recess until 2.15 o'clock p.m.)

[fol. 368] Afternoon Session

2.15 P.M.

Mr. Weinstein: Your Honor, the last documents we discussed were the two telegrams written by Mr. Williams to Mr. Stanford on April 30th concerning the possibility of Singer being able to——

The Court: Exhibits 72 and 73.

Mr. Weinstein: That is right.

Now Exhibit 74 is placed in evidence for two principal purposes: one, to show the relation of Singer's 319 machine and the Messerschmidt machine, and also to show that Messerschmidt suggested that a licensing agreement would be in the best interests of both.

On May 25, 1956, Mr. Adamson, Singer's representative in Germany, wrote to Mr. Waterman stating, on the first page:

> "We had today a visit of Mr. Busselmeier, the patent agent of the Messerschmidt A.G. of Augsburg and the chief designer of that company, Mr. Brandt, who had come to inspect the class 319 machine you have sent us for this purpose.

After only a short inspection both gentlemen said that the design of the automatic unit of this machine [fol. 369] is the same in principle as theirs."

On the same first page the second paragraph from the bottom, Mr. Adamson states:

"As a result of today's inspection of the class 319 Machine Mr. Busselmeier believes it necessary that Mr. Stanford and he meet again as soon as possible and that both put those patent applications on the table which they believe to be infringed by the other party's design.

"Mr. Busselmeier thinks that an amicable settlement will be in the interest both of the Singer and the Messerschmidt Companies because quite a number of other competitors would profit by a dispute which would partly destroy or narrow the claims of either the Singer or Messerschmidt patents."

The next document, your Honor, was written just about a month later—I am sorry, about three weeks later—June 12, 1956. Mr. Lando of Singer's company in Italy wrote to Mr. Stanford—and this letter is dated June 12, 1956, and he states—well, at first he discusses a report which Italian patent attorneys were sending to Singer concerning the coverage of the Messerschmidt patents and he states [fol. 370] "We have little to add to this report. A possibility of Messerschmidt to start a legal case in Italy in defense of his patent exists and we hope that the report will help you to decide whether or not it would be advisable to include Messerschmidt amongst the signers of the non-aggression pact."

On July 13, 1956, your Honor, Singer's attorneys in Scotland wrote to Mr. Williams of their Patent Department——

Mr. Pettit: Your Honor, may I raise a point here? I believe that this document has been excluded.

The Court: I sustained the objection to this, according to my notes, on 76.

Mr. Weinstein: I am sorry, your Honor, I did not take that down.

The Court: On May 3rd—whatever day that was—that was the day I ruled on it and sustained the objection.

The Clerk: That was Wednesday of last week.

Mr. Weinstein: I am sorry, your Honor, I failed to remove it from my set of documents.

The Court: Mr. Weinstein, all these Messerschmidt patents are foreign patents, aren't they?

Mr. Weinstein: No, your Honor. At this point Singer [fol. 371] is principally concerned—the documents I am relating to here relate to Messerschmidt's American application. We will come to Messerschmidt's foreign application at a later day.

The Court: All right.

Mr. Weinstein: On July 16, 1956, Mr. Williams wrote to Mr. Adamson of Singer in Germany, stating that he believed that Singer and Messerschmidt would soon be engaged in interferences. Singer wrote:

> "We now have good reason to believe that Messerschmidt has received, or will within the next several weeks receive, word from its United States attorney that its United States patent application relating to its automatic multiple-cam zigzag sewing machine interferes with an application owned by an unnamed adversary. Messerschmidt no doubt will realize its opponent is Singer. We further believe that Messerschmidt will be given 30 days to indicate to the United States Patent Office whether it wishes to enter or withdraw from such an interference. We presume that it will enter the interference."

On the second page he goes on to state:

> "I would suggest that you advise Mr. Busselmeier [fol. 372] that I can see no reason why an amicable settlement of this entire matter cannot be reached."

And his closing sentence is:

> "Upon learning of the present conflict in the United States Patent Office we hope that Mr. Busselmeier will be stimulated into making further inquiries of you as to our intentions."

Your Honor, I think this document should be related back to Government's Exhibit 74 when Mr. Busselmeier first suggested that an amicable settlement would be in the best interests of both parties because only competitors would benefit from any other settlement.

Now your Honor, after this letter was written, an interference was declared between the Singer application, namely, the Perla application and the Messerschmidt application—and this occurred on September 17, 1956.

The next exhibit, Government's Exhibit 78, we put it in here principally to show the continuing nature of the Singer-Messerschmidt negotiations.

This is a letter written on November 2, 1956, from Mr. Waterman, vice president of Singer, to Mr. Lightner, then president, and which was three and a half months after the previous document, after Government's Exhibit 77, and it [fol. 373] is, as I say, in here just to show Singer's continuing interest.

The first paragraph states:

> "Mr. Stanford and I had been waiting anxiously to hear from the attorneys for the Messerschmidt Company, and in fact on Monday of this week we discussed what our next action should be if we did not hear very soon. However, the day following, Mr. Stanford received a call from the Washington attorneys of Messerschmidt advising that they would like to talk with us, and on Thursday a representative came to New York and went over the situation with us. We learned that they had already advised Bell that it was in its interest that Messerschmidt should sign the patent agreement with us and that, as a result, Bell had sent a letter to Messerschmidt indicating its approval of this action."

* * * * * * *

[fol. 374] The Court: Am I correct in recalling that Messersehmidt is not charged in the complaint with being one of the alleged co-conspirators?

Mr. Weinstein: That is right, your Honor.

[fols. 375-379] The Court: Am I correct in my understanding that in all the dealings between Singer and Messerschmidt, neither Vigorelli not the other German Company, Pfaff, were parties?

Mr. Weinstein: That's correct, your Honor.

The Court: And that this dealing was one entirely between Messerschmidt and Singer in which nobody else participated, or was otherwise connected either with the conspiracy that is alleged or with the Gegauf or Vigorelli patents?

Mr. Weinstein: I think I indicated at the beginning, your Honor, that the purpose of the Messerschmidt documents——

The Court: No. Am I correct in my belief or understanding that that is a fact?

Mr. Weinstein: Yes, that's right, your Honor.

• • • • • • •

[fol. 380] On January 3, 1957, your Honor, in Government's Exhibit 85, the Patent Department arranged through its attorneys in Scotland, Cruikshank & Fairweather, stating:

> "This will advise you that as yet Messerschmidt has not seen fit to execute with Singer an agreement under which each party would be free to manufacture and market in all countries of the world its ornamental stitch zigzag machine."

Singer continued, your Honor, for some months attempting to enter into an agreement with Messerschmidt, and on December 11, 1956, a letter from Mr. Stanford of the Patent Department to Vice President Waterman, he writes, and I quote:

> "However, the recent Singer-Vigorelli and Singer-Bernina patent agreements make it possible for Singer freely to manufacture and market the Class 401 machine under the Vigorelli and Bernina Patents."

[fol. 381] On the second page, speaking with respect to the 319 machine he states:

> "As in the case of the Class 401 machine, the Singer-Vigorelli and Singer-Bernina patent agreements permit us freely to operate under the Vigorelli and Bernina patents and patent applications."

He continues to state that:

"In the United States the corresponding Messerschmidt patent application is now locked in interference with the Singer patent application which relates to the Class 319 machine and we expect to prevail in this interference to the end that Singer will be awarded patent claims which will cover our Class 319 machine and which will be infringed in the United States by the comparable Messerschmidt machine.

"Other than those owned by Bernina, Vigorelli and Messerschmidt, we know of no additional adversely owned patents or patent applications which would be infringed by the Class 319 machine."

[fol. 381a] On page 4 of this document, a statement is found, your Honor, which reads:

"In addition Bell and Messerschmitt undoubtedly realize that they will lose the United States patent interference with Singer with the result that they could in the near future be confronted in the United States with a patent infringement suit based on several Singer-owned patents."

[fol. 382] The negotiations continued, your Honor, and on April 16, 1957, Singer did enter into a cross-licensing agreement with Messerschmidt, and that agreement is Government Exhibit 86. Attached to that exhibit are certain patent drawings. Does your Honor have copies of those?

The Court: I have no drawings attached to this exhibit. I simply have the two-page agreement.

Mr. Weinstein: Here is an extra copy, your Honor (handing).

I asked if you have the drawings because the agreement relates to them, and the subject matter of the agreement can only be gleaned from the drawings.

The agreement is dated April 16, 1957, and in paragraph 1 it states:

"Singer will not bring any infringement action against Messerschmidt under the rights derived from patents now issued or to be issued in any country with respect to subject matter disclosed in the annexed

drawings KL52KE of 14/1/55, KL53KE of 10/7/54 and KL54KE of 6/6/55 and when embodied in sewing machines manufactured and sold by Messerschmidt."

[fols. 383-385] These references to drawings 52, 53 and 54 indicate the scope of a license which Singer granted to Messerschmidt. 52 relates to a manual zigzag machine. 53, I believe, your Honor, relates to a straight stitch machine. 54 relates to the Messerschmidt multi-cam zigzag machine which was similar in scope to Singer's 319 machine. So in essence Singer was granting a license under three different types of machines.

The Court: But none of them were the 401 type, were they?

Mr. Weinstein: That's right, your Honor.

. . . . . .

[fol. 386] The Court: I know. But your expression that Singer wanted to prohibit the importation of machines which were like the 401 does not sound like a statement of one who is experienced in the law of patents, as I know you are. You don't try to assert an infringement against something because it is simply like something else unless it embodies the basic invention.

I have had a most difficult time in this case thus far in trying to find out just what the government's claim is here.

Mr. Weinstein: Your Honor, our contention is that Singer sought to exclude Japanese machines of the machine carried multi-cam type.

The Court: And that it sought to accomplish that exclusion by asserting the Gegauf patent against these Japanese importations.

Mr. Weinstein: That was one patent covering a machine carried multi-cam machine, your Honor.

The Court: Do you say that Singer could have success-

[fols. 387-388] fully asserted infringement against these Japanese machines alleged to have infringed 401 without the Gegauf patent?

Mr. Weinstein: On the basis of the Harris patent, your Honor, they certainly could have made a strong argument that they also infringed.

The Court: We are not talking about strong arguments.

I have been listening to two very able lawyers make strong arguments here, you and your associate, and I admire your legal ability very much, both of you, but I cannot find out yet what this case is about.

Suppose I start this way: Is there any other machine involved in this suit other than the 401 that embodies the Gegauf patents?

[fol. 389] The Court: Is there any other Singer machine in this suit other than the 401 which embodies or applies the Gegauf No. 1 patent?

Mr. Weinstein: No, your Honor.

. . . . . .

[fol. 390] Mr. Weinstein:

. . . . . .

I have indicated that Singer, in its licensing agreement with Messerschmitt, has given it essentially a license under three machines, a manual, a straight stitch and a multi-cam machine. Messerschmitt in turn, your Honor, states:

> [fol. 391] "Messerschmitt will not bring any infringement action against Singer under the rights derived from patents now issued or to be issued in any country with respect to the subject matter disclosed in Singer's German patent applications No. S 46,453 as filed on November 23, 1955 and also in the annexed drawings, Figs. 1 to 62 and S 46,580 as filed on December 2, 1955 and shown in the annexed drawings, Figs. 1 to 13, and when embodied in sewing machines manufactured and sold by Singer."

On its face that is a little difficult to understand, and the next document clearly indicates that what that means is that Messerschmitt will grant Singer a license on both its Perla and Johnson machines. Those figures here, 1 to 62 and 1 to 13, refer respectively to the Johnson and Perla patents, your Honor, the patent applications.

The third paragraph states that Singer and Messerschmitt each agree not to institute in any country any opposition, nullity or invalidation proceeding against or otherwise to attack in any country the other's patents or

patent applications corresponding to Messerschmitt's con-
[fol. 392] structions as illustrated in the drawings indicated in paragraph 1 and to Singer's German applications indicated in paragraph 2, and to immediately withdraw any such proceeding if it has already been instituted, provided, however, that if such patents and patent applications are or have become involved in a Patent Office priority determining proceedings, such as a United States Interference or a Canadian Conflict proceeding, then both parties will work together in order to settle such proceedings in accordance with the laws and regulations of the Patent Office concerned, and in the spirit of this agreement.

Paragraph 5 of this agreement merely states that Messerschmitt, as designated in this agreement, shall be understood as including Messerschmitt A.G., its present and future subsidiaries, affiliated and associated companies, licensees and customers throughout the world.

Singer had no sooner reached an agreement with Messerschmidt which gave it freedom throughout the world to manufacture its 319 machine than did it consider the acquisition of the Messerschmitt patent. Your Honor, on April 17th, the day after the licensing agreement, Mr. Waterman [fol. 393] sent a cablegram to Mr. Lightner, the president of Singer, and in addition sent copies of it to Mr. Goosman, the vice president; Mr. Stewart, the vice president; and Mr. Kircher, the vice president, and in this telegram it stated, and I think it speaks unequivocally, your Honor:

> "Agreement signed 319 completely free same idea as with Vigorelli and Gegauf (stop) They will also assign United States patent rights and probably if we wish all pertinent foreign patents and applications we to license them thus giving us opportunity of prosecuting against others (stop) We will study foreign patent situation since they will bring maintenance cost but if of any value to restrict Japanese especially Brother will be very much worthwhile (stop)"

[fol. 394] Your Honor, I think it is significant to note that in this Exhibit 88, this cablegram, it is a memo written by Vice President Waterman to the president of Singer, sending carbon copies to three other vice presidents. They do not mention European competition as a secondary con-

sideration. They say "But if of any value to restrict Japanese especially Brother," then those patents will be worthwhile.

Mr. Pettit: Your Honor, I don't know whether I should rise to something that is plainly, palpably misleading.

The Court: No. Restrain your indignation. You can just make a little note of it on a yellow pad and you will have ample time to do it with much effectiveness later on.

Mr. Pettit: That is just completely misleading.

The Court: Now that you have expressed your indignation, just make a little note on your yellow pad. Thank you.

Mr. Weinstein: Your Honor, the very next day, in Government's Exhibit 87, a memorandum which was written by Mr. Waterman to Mr. Lightner is introduced to show, one, that the Messerchmitt Company was badly off financially and that Singer believed this to be the fact; two, [fol. 395] the nature and scope of the cross-licensing agreement, and, three, that Singer and Messerschmitt had discussed Messerschmitt's turning over all of their patents and applications to Singer which were involved in the present situation.

The third paragraph of this letter states:

> "The M.Co. is badly off financially. We gathered throughout the talks the impression they were anxious not to incur any more expenses in our interferences, present and future."

The last sentence on this page reads——

The Court: I guess there are a lot of German companies that in those days were a little bad off financially and since have done very well.

Mr. Weinstein: Apparently so, your Honor.

The agreement states, speaking of the April 16th cross-licensing:

> "They will take no action against any of our machines which have in them the features of the 319 Perla patent application anywhere in the world and also of the 401 Johnson patent application, likewise, although we do not believe this latter machine is in any conflict with their patents or patent applications, and that we [fols. 396-398] will take no action against their presently designed machines referred to very completely

in the agreement by drawing numbers under drawings initialed and made a part of the agreement, just as the Perla and Johnson patent drawings were likewise initialed and made also a part of the agreement."

The closing paragraph reads:

"The subject of M turning over all their patents and applications to us, and we licensing them, is quite involved and I will not go into it in this letter."

* * * * * * *

[fol. 399] Government Exhibits 93, 94, 95 and 96 are in evidence to show the culmination of this negotiation in the acquisition of the Messerschmitt application under which Singer already held a license.

In Government's Exhibit 93 Mr. Adamson wrote to Mr. Stanford of Singer's Patent Department on May 20, 1957, and states, speaking of a letter that he has sent:

"In that letter we informed Dr. Wiegand of the [fol. 400] wishes expressed by Mr. Busselmeier and his suggestion to meet Dr. Wiegand at either Frankfort or Munchen. We told Dr. Wiegand inter alia that you did in no case wish to give Messerschmitt the possibility of giving a license to anybody and that this should be limited as much as possible, and we also sent Dr. Wiegand copies of the correspondence and telegrams in order to post him fully. We asked him to study the matter and then let us know when a meeting with him and Mr. Busselmeir could take place so that our Mr. Kruger could, if desired, go to Munich if that town should be preferred to Frankfort."

On the second page of this letter, your Honor, Mr. Adamson goes on to state:

"In his letter to you of May 14th, Dr. Weigand has underlined that Messerschmitt is willing to accept a 'non-exclusive, non-transferable and royalty-free license' under U.S. Patent Application No. 548,481, but we wonder whether this 'non-transferable' will be of any practical value, seeing that in paragraphs 2

and 3 of the draft for new document (3) reference is made to the passages in the Agreement of April 16, 1957"—namely, their cross-licensing agreement—[fol. 401] " 'that Singer will not enforce any rights from any patents against Messerschmitt, its present and future. . . licensees throughout the world' and 'that the provisions of the said agreement . . . shall remain unaltered.'

"This would, in our view, include for Messerschmitt the faculty of granting licensees in the States also to other people than the Bell Portable Sewing Machine Company, for instance, and open the chance for Messerschmitt to give a license 'to anybody' a development which it has been your wish to avoid as far as we know and of which we have informed Dr. Wiegand."

In this next paragraph of the letter, your Honor, Mr. Adamson states the dual nature of the Messerschmitt application, not only that it contains subject matter which is common to the Perla application but contains subject matter which is entirely different and separate than subject matter which Singer is presently producing under. He states:

"We do not know whether your desire of preventing the grant of a license under U.S. Patent Application 548,481 or resulting patents by Messerschmitt 'to anybody' refers to the entire subject matter of the appli-[fol. 402] cation which, if we correctly remember, covers more than the similar Singer applications, or only to that surplus over the Singer applications. If that surplus is neither disclosed in the Messerschmitt drawings K152KE, K153KE and K154KE there might remain something 'non-transferable' under an agreement as per the 'Draft for new document (3)' otherwise it will appear to us that this term is void of any bearing. You may in that case probably want to try to get some modified wording accepted which will limit the range of possible future licensees."

I think this document indicates that, although Singer had already entered into an agreement with Messerschmitt and with respect to that agreement, insofar as Messerschmitt's

application contained material relating to the 319 machine, Messerschmitt might grant licenses, that Singer obviously wanted no licenses granted on the remaining subject matter which related to a cam mechanism for controlling the feed.

An answer to that letter, your Honor, was forthcoming on May 24, 1957, when Mr. Williams wrote to Mr. Adamson, stating:

> "In answer to your questions we would state that under the Singer-Messerschmitt agreement of April [fol. 403] 16, 1957, Singer agreed not to enforce against Messerschmitt or any of its licensees and customers any rights derived by Singer from any patents in any countries with respect to subject matter disclosed in certain specified Messerschmitt drawings which were annexed to the agreement. These drawings disclosed three existing Messerschmitt sewing machines of which none employs the automatic feeding mechanism which is disclosed in the Messerschmift U.S. Patent Application Serial No. 548,481 which forms the subject matter of the proposed new Singer-Messerschmitt agreement mentioned in the first paragraph of this letter."

He goes on in the next paragraph to state:

> "Under this agreement it is Singer's intention not to permit Messerschmitt to extend its license under application serial No. 548,481 to other parties.
>
> "In other words, although Messerschmitt in the United States has the right to make and sell machines of the type designated in the Singer-Messerschmitt agreement of April 16th, and to license any other parties to make and sell such machines in the United States, under the newly proposed Singer agreement, [fol. 404] Messerschmitt will have the right to make and sell in the United States on its own account machines incorporating the automatic feed of patent application serial No. 548,481, they will not be able to transfer such right to other parties."

An agreement was finally reached with Messerschmitt on June 4, 1957, and that is Government Exhibit 95, in which it states:

"Whereas Singer and Messerschmitt have agreed, by an agreement of April 16, 1957"——

and that is the cross-licensing agreement——

"number 1, that Singer will not enforce against Messerschmitt any rights derived from any patents in any country with respect to subject matter disclosed in the drawings 52, 53 and 54 annexed to said agreement, and Messerschmitt includes, according to No. 5 of said agreement, its present and future subsidiary, affiliated and associated companies, licensees and customers as far as the use of the sewing machines is concerned throughout the world."

[fol. 405] In the next paragraph, your Honor, Singer and Messerschmitt agree that the terms of that licensing provision shall remain unaltered.

And note on page 2 of this agreement, your Honor, that Singer does eventually grant Messerschmitt a non-exclusive, non-transferrable, royalty-free license under the patent application.

Exhibit 96, your Honor, is merely a formal assignment, your Honor, for recordation in the Patent Office.

Your Honor, the next documents we come to relate to Singer's desire, now that it has not only the license of Messerschmitt but also the assignment of Messerschmitt's patent application—Singer's desire to obtain all of Messerschmitt's foreign applications which correspond to its American application.

Government's Exhibits 97, 98, 99 and 100 clearly indicate what Singer had in mind, why they wanted these patents, your Honor.

Government's Exhibit 97, your Honor, is a letter written from the Patent Department to Mr. Wiegand—a letter written from the Patent Department to Mr. Wiegand, Singer's patent attorney in Germany. Mr. Stanford states:

"During the negotiations between the representatives [fol. 406] of Messerschmitt and Singer in Frankfort on April 16th, we indicated that we might be interested in acquiring the Messerschmitt foreign patents which correspond to its United States patent application Serial

No. 548,481. At that time the Messerschmitt representatives stated that they would consider assigning these patent rights to Singer in return for a license back to Messerschmitt.

"We have considered this matter further and have concluded that it would be advantageous for the Singer Manufacturing Company to own all of the Messerschmitt patents and applications corresponding to United States application Serial No. 548,481."

I call your Honor's attention to the fact that the licensing agreement that Singer had with Messerschmitt related to all countries of the world.

Government's Exhibit 98, your Honor, is a letter written by——

The Court: Why do you call that to my attention? What purpose do you have in mind?

Mr. Weinstein: Singer was perfectly free to sell their machines where they wished——

[fol. 407] The Court: We are not concerned with that in this case, are we?

Mr. Weinstein: It goes to their intent.

The Court: Isn't that a factor to be regarded in their favor, that they did not limit or restrict their market, that they did not interfere with the United States commerce by way of exports?

Mr. Weinstein: I am not quite sure I understand your question, your Honor.

The Court: Well, had Singer agreed to stay out of foreign markets it might become important as an antitrust violation.

Mr. Weinstein: Well, I do not think Singer had the bargaining advantage——

The Court: I say had they agreed to do that.

Mr. Weinstein: Oh, that is right, your Honor.

The Court: And the mere fact that they did not agree to stay out of foreign markets would be an indication of their good purpose to observe the antitrust laws.

Mr. Weinstein: No, I don't agree with that, your Honor. It merely——

The Court: You think that no good must be ascribed to this?

[fols. 408-410] Mr. Weinstein: No, I think one does not have to violate the antitrust laws in every possible respect to violate it in one respect. We do not allege that there is any world division of markets in this case.

The Court: All this talk about conspiracy, I wanted to see whether it was all ether or atmosphere or whether it was something substantial.

Suppose we take a few minutes recess.

(A short recess.)

Mr. Weinstein: Your Honor, we were just proceeding into Singer's desire to obtain the Messerschmidt foreign applications, and I indicated that Government's Exhibits 97, 98, 99 and 100 were relevant to this.

In order to speed things along, I will go right to——

The Court: Well, you can speed things along but don't leave anything out that you consider essential.

* * * * * * *

[fol. 411] The next two letters, your Honor, are both dated October 17, 1957. The first one is Government's Exhibit 103. It is a letter from Mr. Waterman to Mr. Lightner dated October 17, 1957, and its subject concerns the Messerschmitt applications. It states:

"Dear Mr. Lightner:

"I cabled you concerning negotiations with Messerschmitt. We arrived at an arrangement whereby Mes-
[fol. 412] serschmitt will assign to Singer all of its foreign patents."

He continues on a little further down in the paragraph:

"These patents are the first that Singer will own which include among the claims certain reverse feeding means in connection with some other mechanisms of an automatic cam-block machine. They are not fundamental except to the particular mechanism of the Messerschmitt style of machine. They are a worthwhile addition to Singer's collection of automatic zigzag machine patents. It remains for Mr. Wiegand's office and the Messerschmitt attorney to finalize the exact terms of the agreement and to take care of the

signing by both parties. These papers will come forward to me in New York in a short time. The bundle of patents will cost us $25,000 and compensates Messerschmitt for its patent costs and a payment to the inventor (necessary under German law) and perhaps between $5,000 to $10,000 extra. Mr. Stanford thinks this cost is really low for this number of patents. It was necessary to agree that in case of a sale of the [fol. 413] sewing machine business by Messerschmitt the purchaser of the company would be licensed just as Messerschmitt under these assigned patents, to build and sell the present Messerschmitt machine. Such sublicensing is only permitted to the successor building sewing machines of the Messerschmitt company."

At the bottom of the letter, your Honor, it goes on to state:

"Just to show you what we went through in enduring the negotiations I am inclosing two typewritten sheets. All this about sub-licensing others promiscuously and division of territories where machines would be made and sold was pushed aside very quickly."

The closing paragraph states:

"One other point to be in a memorandum in letter form accompanying the agreement states that before Messerschmitt sells its business to anybody it will advise Singer and give it first option to purchase. This means little to us other than that we will have knowledge of what is going on before it happens. I personally believe that Messerschmitt will shortly set [fol. 414] up an independent sewing machine company, apart from its other interests, and then the new company will dispose of this sewing machine business. It is well that we own these patents before all of this happens."

Your Honor, Government's Exhibit 49, which Mr. Elkins has already covered, is again just mentioned here because it was a letter written on the same date by the same Mr. Waterman to the same Mr. Lightner. On that same day he wrote:

"Dear Mr. Lightner:

"Yesterday Mr. Stanford and I met with the Gegauf people and discussed from midmorning until early evening the matter of the assignment of the Gegauf basic U. S. patent on its automatic cam-block zigzag machine. Such assignment like others that we have concluded will give Singer complete ownership of the patent (or as it is the case in this instance, patent application) and in return will license Gegauf to build and to sell his machines just as he is now doing."

These letters are all placed together, your Honor, just to show that at the very same time that Singer was giving [fol. 415] consideration to obtaining the Gegauf patents, although it already held a license under it, it was at that same time giving consideration to acquiring all of Messerschmitt's foreign applications for the purposes of restricting the Japanese and——

The Court: That is all Messerschmitt's foreign applications concerning a definite patent—not all of it, but all concerning one definite patent which related to the pending United States application.

Mr. Weinstein: It was a patent that had two parts to it, your Honor. It was on a machine-carried multi-cam machine.

The Court: Yes, but when you say "all" of their patents you do not mean it that way—all the patents that Messerschmitt owned?

Mr. Weinstein: Corresponding to their American application, your Honor.

The Court: All right. "All" is a small word with a big meaning.

Mr. Weinstein: Government's Exhibit 104, your Honor, is a letter by Mr. Adamson of Singer in Germany to Mr. Stanford of Singer's Patent Department, and it is dated January 24, 1958.

He states:

[fol. 416] "Dear Mr. Stanford"—and the full heading is. "Re: Agreement Between Messerschmitt A.G. and The Singer Manufacturing Company (Foreign Patents)."

The second paragraph states, concerning their meeting with the Messerschmitt people:

"We then tried to make an appointment with Mr. Busselmeier in order to give Mr. Waterman, whom we expected here this week, a chance to speak to him. After some difficulties we could get hold of Mr. Busselmeier who was away traveling at Cologne and Wiesbaden and invited him for a conference here at Frankfort.

"This conference took place late in the evening on Tuesday, January 21st. There were present Mr. Busselmeier, Mr. M. L. Waterman, Mr. Adamson and Mr. Kruger."

The last paragraph on this page, your Honor, states:

"Mr. Busselmeier explained that the managing director Dr. Rothe of the Messerschmitt A. G. had not made up his mind yet to sign the agreement. There were two items which evidently had prevented this. [fol. 417] "The one evidently is that Dr. Rothe appears to keep turning over in his mind whether Messerschmitt had better not sell the sewing machine business, the other is that the supplementary understanding to the signing of the agreement for the Foreign Patent by Messerschmitt, confirmed to Mr. Busselmeier by Mr. Niemann in his covering letter of November 1st, 1957, with which he handed to Mr. Busselmeier the revised draft for the proposed Singer-Messerschmitt agreement in triplicate, should be included with the Singer-Messerschmitt agreement proper.

"This supplementary understanding covers the grant of the same license as given to Messerschmitt under the agreement also to a possible purchaser of its sewing machine business, and the option of 30 days to Singer for the acquisition of this business in case of an intended sale of it by Messerschmitt."

On page 2, your Honor, the second paragraph from the bottom states:

"Out of these considerations Dr. Rothe evidently believes that the sale of the sewing machine business

will be more facilitated and give a better return if a [fol. 418] bunch of valuable patents can be sold along with it. Mr. Busselmeier mentioned that there may already exist prospective buyers and that these may also have their domicile abroad since Dr. Rothe may have come into contact with them during his frequent journeys abroad."

Then what I consider to be a very important paragraph on page 3, your Honor, he goes on to state:

"Mr. Waterman told Mr. Busselmeier"—Mr. Busselmeier represents Messerschmidt, your Honor—"that Singer is not interested in the acquisition of the Messerschmitt sewing machine business at present and that Singer is neither interested in the Messerschmitt foreign patents to the extent that they would buy the whole sewing machine business in order to become owners of these patents. In fact, Singer does not need the patents for any of their new machines in construction or being designed. They were just wishing to obtain the patents for supplementing their own similar patents as Singer is often acquiring patents of other inventors."

[fols. 419-432] In response to this, your Honor, Mr. Stanford cabled Mr. Adamson on January 28, 1958—in response to these negotiations with Messerschmitt—and he stated:

"We agree"—this is Government's Exhibit 105——
"We agree to purchase Patents without business under modified Busselmeier plan. If Patent owner agrees send us copy of agreement for approval."

. . . . . .

[fols. 433-435a] New York, May 9, 1961, 10:30 A.M.

. . . . . .

[fol. 436] Mr. Weinstein: Your Honor, the next two sets of documents, and there are only a few, are used by the government to indicate principally the same thing, namely,

that Singer was concerned with Japanese competition and that they were not unwilling to consider Europeans as [fols. 437-442] licensees.

Mr. Pettit: May we know what document that is?

Mr. Weinstein: Yes. We are concerning ourselves with the document relating to Husqvarna, Exhibits 111, 112, 113, 114, 115, 116, 117, 118, 119, and 120.

. . . . . .

[fols. 443-446] Like Husqvarna, your Honor, Singer showed a willingness to license possibly another European manufacturer—and this is Phoenix.

. . . . . .

[fol. 447] The Court: Isn't the net result of these exhibits this: No. 1, that Singer named both of these companies, the Swedish company and the Germany company, as defendants in the complaint before the Tariff Commission.

No. 2, that the Swedish company and the German company asked Singer to withdraw that complaint and grant them a license.

No. 3, that Singer refused to withdraw the complaint or to grant them a license.

Is there anything unusual to giving an equivocal answer to a party whom you have named in a complaint, with the hope that he might not defend, and that your course may be much easier than to definitely turn him down with a definite answer and lead to an antagonistic defendant?

[fol. 448] Isn't that part of the ordinary conduct of litigation?

Mr. Weinstein: I think Singers reasons, your Honor, are illustrated by Government's Exhibit 109, which we have already read, and in which Mr. Williams, in writing to Mr. Kircher, states:

> "You will recall that at the December 22 conference there was no unanimity of opinion as to how this Statement should be worded."

They were talking about the Statement to the Tariff Commission.

"However, Mr. Colburn"—and we add that Mr. Colburn conducted part of the litigation for Singer in the Tariff Commission——

> "is quite convinced that this Statement should not include any comparisons between imported Japanese and European sewing machines with regard to the damaging effects of such imports to United States manufacturers of sewing machines. In view of Mr. Colburn's rather strong feelings in the matter we recommend approval of the enclosed Statement B."

And the statement was written in its own best interests, in realizing that they would have gotten nowhere in the Tariff Commission had they wanted the Tariff Commission [fol. 449] merely to exclude Japanese machines, as they admit in one of the documents that we read—that the Tariff Commission does not act as a licensing agency to determine who shall come in or who shall stay out, your Honor.

The Court: But the net result of Singer's actions is that they kept these European manufacturers named in the complaint as defendants, that they would not grant them a license and continue to press their complaint against the European importers as well as the Japanese importers.

Mr. Weinstein: In the first place, your Honor, I think, as we have stated before, there are no defendants in the Tariff Commission.

The Court: Well, they call them "defendants"— and you have called them "defendants" and justified that description—you and Mr. Elkins, so that I fall in the same pattern.

Call them anything you want. Call them "respondents", "defendants".

Call them by other sweet names.

Mr. Weinstein: Singer did not introduce Husqvarna's machine in the Tariff Commission, your Honor, as was mentioned in this letter—if Husqvarna did not oppose [fol. 449a] Singer, Singer would not oppose Husqvarna.

I think if Singer had been successful, they were leaving themselves an opportunity of licensing European manufacturers.

The Tariff Commission was specifically aimed at Japanese manufacturers, and Singer well knew that they would not

stand a chance had they gone in and asked them to please exclude only Japanese machines.

[fols. 450-466] The Court: You see what you are doing here, you are picking out circumstances, and from those circumstances you want me to draw an inference of guilt when those circumstances are equally susceptible to an inference of innocence.

• • • • • • •

[fol. 467] Mr. Elkins: If your Honor please, Government's Exhibit 141 through 144, as far as plaintiff is concerned, can be removed from the record. We will not attach any significance to them. They relate to a new machine that came along pretty late in the game, I think in 1959, the [fols. 469-468] Vigorelli machine, and the purpose of having them in there in the first place was merely to show a Singer interest in any patent that——

Mr. Pettit: If, as I understand, this is a motion to delete, I want to oppose it.

The Court: No. He says he doesn't move to delete them but that, as far as the government is concerned, they do not add anything to the government's case. I suppose you contend that they add substantially to the defendant's case.

Mr. Pettit: They have an effect.

The Court: Yes. All right. But he, perhaps implicitly, recognizes that.

Mr. Elkins: I will be very happy to comment upon them, your Honor, as we originally intended to do.

The Court: You don't have to if you don't want to.

Mr. Elkins: I suppose we might as well, your Honor.

The Court: Apparently it might be just as well because of the importance that Mr. Pettit places upon them.

• • • • • • •

[fol. 470] Government's Exhibit 142 is a letter from Mr. Waterman to Mr. Lightner which answers the previous letter, and at the bottom of the page Mr. Waterman states:

> "However, I have telephoned to Baumann to sound [fol. 471] out Vigorelli to learn if the new machine may be seen by me next week, and I shall then also learn if

there are any patents of which we have no knowledge and also if there seems to be any way we can study the equipment. This latter I will have to inquire about carefully and only if the conversation can be carried on in the proper spirit."

At the bottom of the page Mr. Waterman continues:

"You may be assured I shall attempt to get the opportunity to evaluate this latest Vigorelli effort and any other patents or applications of which we can learn."

The Court: Just before you leave that exhibit, I note that you omitted one paragraph there. You omitted the paragraph in which this man—what is his position in Singer?

Mr. Elkins: Vice President Waterman.

The Court: A pretty responsible man.

Mr. Elkins: Yes, I would say so.

The Court: As far as the management of the concern is involved. He writes here, not conscious of the impending suit which is now before us, contemporaneous writing which [fol. 472] I think reflects his true mind and true view of the situation, and he says:

"I realize full well that what you say about our being behind in the field of zigzag sewing machines is so."

Doesn't that indicate to you that Singer realized that for their very continued existence they had to acquire this Gegauf patent and that that was the reason it was acquired and not to assert it against any Japanese importers exclusively?

Mr. Elkins: Definitely not.

The Court: But for their very existence?

Mr. Elkins: Definitely not, your Honor. And, if I may address myself to that——

The Court: For instance, what significance do you also place upon this last sentence of this same paragraph that you omitted to read, where he says, "I feel pretty sure that it will be favorable, but we have been skating on some pretty thin ice." Doesn't that mean that Singer's technical posi-

tion has been extremely thin and untenable and would be so far more without the Gegauf patents and this zigzag sewing machine? Isn't that what this man had in mind?

Mr. Elkins: Definitely not, your Honor, and, if I may [fol. 473] explain, and I think we covered this earlier, we concede that when this new type machine was introduced, which we have called the machine carried multi-cam machine, Singer was, in relation to their technology, in relation to its patent application position, exactly what Mr. Waterman states here, that is, behind in the field of zigzag sewing and behind in relation to these built-in cam machines.

We have conceded that, that being the case, Singer had every right to try to get a license from competing patent applicants in order to continue to manufacture and to sell its product which at that time or during 1955, prior to 1956, it was developing.

We believe here that Mr. Waterman—in fact, we know—was talking about that situation, was talking about Singer being behind and was talking about patent licenses and not the acquisition of patents, your Honor.

The Court: Why do you say that when you know that the mere possession or right to have a patent license or to manufacture under a patent does not give you status to sue for infringement? And if you have a license under a foreign-owned patent, you are hopeless and helpless, if you try to stop infringements, in many situations.

[fol. 474] Mr. Elkins: It is absolutely true, your Honor, that Singer, as a non-exclusive licensee under a patent, would have no right to bring suit upon it.

The Court: They would be exercising and applying an invention which, if the foreign owner of the patent did not actively protect it by infringement suits, for all practical purposes would be in the public domain and everybody would be using it.

Mr. Elkins: I can only add again, your Honor, that Singer's legal rights were represented by the fact that it had a non-exclusive license from Gegauf and that——

The Court: It was a non-exclusive license with certain express limitations and reservations to Gegauf. There was a little bit more than the ordinary non-exclusive license. But even with that, they were helpless unless Gegauf wanted

to begin a suit for infringement, and apparently Gegauf was holding on to his money over in Switzerland and did not want to spend anything to involve himself in litigation which would cost him anything.

Mr. Elkins: There is nothing in the Singer-Gegauf agreement of April 14, 1956 which is applicable here in this discussion except a promise by Gegauf that it would not [fols. 475-477] sue Singer on any patents that resulted from its, Gegauf's, applications. Singer received nothing else. As far as its legal rights were concerned under that agreement Gegauf, as far as the face of the agreement is concerned, could have licensed everybody and anybody, could have sued on the patent or could not have sued on the patent. Singer obtained no legal rights other than what we say, a promise from Gegauf not to sue it.

The Court: But Gegauf did not obligate itself to file any infringement suits and it did not authorize Singer to file any infringement suits in its name, Gegauf's name.

Mr. Elkins: That's right, your Honor.

The Court: So Singer had no way to protect its product from products of unlicensed producers or manufacturers.

Mr. Elkins: That agreement of April 14, 1956 as to its provisions that relate to this discussion——

The Court: I regard this paragraph that you omitted to read as being quite important.

Suppose we take a recess now for about five minutes.

(A short recess.)

* * * * * * *

[fol. 478] Government's Exhibit 144 is of the very same nature. This is a memorandum from Mr. Lightner to Mr. Waterman, and in the last paragraph, still talking about the same subject, he states:

> "The thing that I find to be missing is an analysis of the patent situation: that is, what is there in the patent area which we can acquire? To state it differ- [fols. 479-499] ently, what can we make a machine do if we acquire the patents that would be secured in a new deal with Vigorelli and that we cannot do under our present patent situation? It seems to me that this is the crux of the problem, because I think we want

to explore the possibility of our being in a position to build the maximum sales appeal into a new Singer machine."

Inasmuch as we charge here an attempt to monopolize, your Honor, and that that attempt was by virtue of patent acquisition, that is the only reason why we cite the documents we have just referred to. Inasmuch as Singer is the only manufacturer in the United States, virtually the only one and certainly the only one in the zigzag field, if, of course, they buy up every patent that comes along, it would ultimately be impossible for anybody else to get into the industry. Beyond that we attach no great significance to them.

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[fol. 500] ARGUMENT ON BEHALF OF GOVERNMENT BY MR. ELKINS

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[fols. 501-514] The patent applications which we have been discussing, ultimately issued from the United States Patent Office—the Harris Reissue in November, 1957, Perla in November, 1957—excuse me, both of them in October, 1957; the Johnson patent in December, 1958, Gegauf 1 in April, 1958, and Gegauf 2 in March, 1959.

We stated before the Perla and Johnson patents resulted from Singer's own research.

Of those that we have mentioned, Gegauf 1 was acquired.

Gegauf 2 was acquired.

The Harris Reissue actually was acquired but away back in the early days when Singer was on thin ice and was looking for licenses from competitors, so that the acquisition of the Harris Reissue did not contribute at all to the offenses which we allege here. They bought it for defensive purposes, not offensive purposes.

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[fol. 515] The Court: Does the government complain because Singer acquired too many basic patents?

[fol. 516] Mr. Elkins: The government complains, your

Honor, that the defendant Singer entered into a conspiracy, the terms of which would group all of these various patents in Singer for the purpose of using them to limit or exclude competition from the Japanese-made machines.

We also alleged an attempt to monopolize by virtue of the acquisition and use of the patents in question, so that what we were trying to do there, your Honor, relying upon the material which is set forth in the statement of facts, is to show that the effect of it, through the successful enforcemen of the patents involved, would indeed have given Singer a monopolistic share of the market here in the United States.

The Court: Will you reporter please read my question to Mr. Elkins—and if you can make a categorical response I will be grateful.

(Record read)

Mr. Elkins: I suppose that it could be stated that we do, your Honor. However, the question is relating solely to the acquisition of patents by Singer, apart from any conspiracy, apart from any attempt on the part of Singer to monopolize.

Answering the question directly, we would say yes, your [fol. 517] Honor, it acquired too many patents and as a result of the acquisition of its patents, it did indeed attempt to monopolize, among other things—it attempted to monopolize manufacture, sale and distribution of these machines in the United States.

The Court: But you have presented no evidence of it having asserted or attempting to assert any of these patents as against any other Japanese importations.

Mr. Elkins: If I may address myself to that, your Honor, we have been dealing with the conspiracy, and according to the evidence as we evaluate it, the conspiracy was to group them in Singer for the purpose of enabling Singer to exclude or limit competition from the Japanese products.

It is also true that when Singer acquires the patents, it has the power to exclude anybody and everybody other than, as it appears here, Vigorelli and Gegauf.

It has the power to exclude so that the material that we have just presented to the Court related to two parts: the effect of using those patents as against Japanese imports,

and also the effects of using the full power which Singer obtained by acquiring those patents.

[fol. 517a] The Court: But you have presented no evidence of any attempt by Singer to assert any of these patents against anybody except Japanese importations; isn't that the fact?

[fol. 518] Mr. Elkins: As I recall the evidence, your Honor, it all relates to exclusion of the Japanese. I have in mind the patent suits. They were all directed against companies that were dealing in the Japanese-made products. The Tariff Commission, on its face, of course, relates to all imports.

The Court: If you were cross-examining me and propounded that question to me as a witness, would you expect a yes or no answer, as an experienced examiner?

Mr. Elkins: There is no evidence that I can recall reflecting that Singer asserted any one of these patents as against a European manufacturere except the United States Tariff Commission proceeding which relates to all imports.

The Court: Is it your contention that Singer acquired the Gegauf patents with the intention and with the purpose of asserting them against importations other than those of Janapese origin?

Mr. Elkins: There is, as I recall, very little evidence that relates—and I am meeting your question, your Honor—to Singer using the patents as against Europeans.

The Court: The fact that you say that you are meeting [fol. 519] my question indicates to me psychologically that you have a doubt in your own mind as to whether or not you are.

All right.

Mr. Elkins: There is general material, your Honor, if I can put my finger on it in just a moment, relating to what I believe is in your Honor's mind and relating to the idea of Singer asserting these patents against Europeans if it so sees fit.

When Mr. Stanford was going to Europe to confer with Mr. Gegauf, a policy statement was drawn up by the president of Singer at that time for the guidance of Mr. Stanford. That document indicated that the concern or the thinking of Gegauf was that these patents would be as-

signed to Singer for the purpose of enabling Singer to exclude machines from Japan. The document also went on to say that an effort should be made to get a transfer of the applications from Gegauf which would enable Singer to use them against any and all Europeans. Mr. Lightner, in this memorandum which is Government's Exhibit 57, stated:

> "If we do have to pay such a price, it is very desirable to try to get some quid pro quo for the excessive price, and this may well lie in this matter of licenses [fol. 520] to the unnamed European manufacturers."

There Mr. Lightner is referring to the fact that Mr. Gegauf, as shown by the documents, is precisely and particularly interested in the exclusion of Japanese competition, not so interested as to Europeans. Here Singer is contemplating the idea of receiving something from Gegauf which will omit licenses to the European manufacturers.

The Court: That doesn't show or indicate an agreement or purpose on the part of these conspirators, does it?

Mr. Elkins: It shows the purpose on the part of these conspirators as to the Japanese products, your Honor.

The Court: Does the government contend that the Gegauf patents were acquired by Singer to be asserted against European as well as Japanese competitors and with that purpose in mind?

Mr. Elkins: I believe, your Honor, that the defendant Singer, in buying these patents, would assert them against Europeans or get royalties from them. I cannot go into it any deeper, any more specifically than that. All that we know about the situation is what is reflected by the evi- [fols. 521-523] dentiary material. The same document from which I am quoting said—Mr. Lightner said:

> "If Bernina is to continue to have the right to send machines into the United States, and if they consider that right important, they may very well see the wisdom of enabling us to stop other imports from Europe as well as those from Japan."

This indicates that Singer certainly, if it got an assignment from Gegauf that was unfettered, would see the wisdom of being enabled to stop other imports from Europe as well as those from Japan, and the only limitation that was put in the assignment by Gegauf, and this is what they are talking about there, was the limitation on the ability of Singer to use the assigned patents against Vigorelli and Pfaff. And, as Mr. Farrell pointed out this morning, the agreement was later amended by the deletion of the name of Pfaff.

If your Honor please, we will be finished as soon as Mr. Weinstein addresses the court briefly on two incidental matters.

* * * * * * *

[fol. 524] The Court: Come back to my question. Now just taking the facts that I have given you, without anything else——

Mr. Weinstein: Could I have that question read again?

The Court: —do you contend that it is unlawful for an American manufacturer to acquire title to an American-issued patent which is owned by a foreign competitor so that it can produce and manufacture under that patent here in this country?

Mr. Weinstein: We are restricting ourselves to attempt to monopolize with respect to this question?

The Court: That's it. Forget all this talk about conspiracy.

[fol. 525] Mr. Weinstein: I say if the sole American manufacturer acquires an American patent for a purpose of further entrenching itself and making it less likely that it would have competition, that is an unlawful attempt to monopolize under Section 2, your Honor.

Your Honor, I would first like to direct myself, and I will be very brief, to the agreement of April 14, 1956, the so-called cross-licensing agreement between Singer and Bernina, which is Gegauf. That is Government's Exhibit 26.

We offer this agreement to show that one of the means used by the conspirators to get broad claims is unlawful on its face. This cross-licensing agreement, your Honor, involved some, I think, fifteen or so patents and patent

applications, but we will restrict ourselves simply to the Gegauf-United States application which later became Gegauf 1 and the Harris patent.

At the date this agreement had been entered into, the Patent Office had suggested a claim for the purpose of interference to Gegauf. The Patent Office, subsequent to this agreement, determined that that claim could not be allowable and that it was invalid because of prior art and then suggested another claim which later became the subject of the interference. But at a time when that claim had been [fol. 526] suggested by the Patent Office, the claim which the Patent Office later held to be non-patentable, Singer and Gegauf entered into an agreement which they termed a cross-licensing agreement, and the opening preamble paragraph on page 2 states:

". . . that Singer and Gegauf realized that Interference proceedings are about to be opened in the U.S.A. between the said Harris Reissue application and one or more patent applications of Gegauf corresponding wholly or partly to its above-mentioned patents and patent applications. In view of the foregoing, Singer and Gegauf have entered into the following agreement:

"1. Singer and Gegauf each undertake not to do anything either directly or indirectly and in any country, the result of which might restrict the scope of the claims of the other party relating to the subject matter of the above-mentioned patents and patent applications.

"Singer and Gegauf each undertakes, in accordance with the laws and regulations of the Patent Office concerned, to facilitate the allowance in any country of claims as broad as possible as regards the subject [fol. 526a] matter of the patents and patent applications referred to above."

[fol. 527] This agreement, I again stress, was made at a time when a claim was pending for interference which the Patent Office later said would be unpatentable and removed from the issue of interference, as the Patent Office did, on its own motion.

Your Honor, we claim that these provisions are not the usual licensing provisions.

The next paragraphs of this agreement go to the licensing provisions. By the very placing of these paragraphs first, it is quite clear what the parties intended, that if placed in an interference in order to make sure valid patents are granted, the parties will determine the issue of priority as the law requires it, and no party would do anything which would possibly narrow the scope of the interference, and as a matter of fact they will facilitate the granting of claims as broad as possible.

Why do we say this is illegal? We say this is illegal, your Honor, because this is no ordinary agreement. This is not an agreement involving two parties. This is an agreement which involve the public.

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[fol. 528] We say, your Honor, that any party in an interference is perfectly free to follow his own best interests as to how he best feels that interference should be litigated, but we say it is patently illegal to enter into an agreement and say "I will give up my rights to contest in an inter-party proceeding the very nature of the patentable issue.

• • • • • • •

[fol. 529] Mr. Weinstein:

We raised this point, your Honor, because the patent system is just a system—Congress has built into it certain checks and balances. It is for the most part an ex-parte system, but Congress and the Commissioner of Patents have determined that when an interference is declared, the parties shall act in an inter-party manner, and the rules of the Patent Office—and I especially refer, your Honor, to Rule 232 of the Patent Office which says that a party is free to challenge the count in an interference as being non-patentable. It is a very valuable right, your Honor. A study made by the Senate has indicated that in 100 applications which were checked into, in 31 per cent of the cases the party alleged that the count was unpatentable, and that in 42 per cent of those cases where the issue was raised the count was held to be unpatentable.

[fols. 530-535] We claim, your Honor, that by entering into this agreement to gain broad patent rights, and to assert these patent rights against Japanese competition, the parties have entered into an agreement which is unlawful on its face.

Your Honor, I would like to raise one other point with respect to this. I would like to show you how far the defendants have gone in this case.

In the first place, they agree that they are going to get broad claims. They agree that they are going to get claims as broad as possible, and they enter into an agreement which ties their hands, which seals their lips so far as limiting their claims are concerned, and then when they turn around to enforce those claims, they enforce them in the United States Tariff Commission where the question of validity cannot be raised.

. . . . . .

[fols. 536-538] OFFERS IN EVIDENCE OF DEFENDANT'S EXHIBITS

Mr. Pettit:

. . . . . .

[fol. 539] Your Honor, I would like to first put in evidence the Singer 206 machine, an innocent machine that may be [fol. 540] said to be the cause of all this turmoil fundamentally.

The Court: The clerk will mark it in evidence as Exhibit 105.

(Received in evidence as Defendant's Exhibit 105.)

Mr. Pettit: You will find this machine referred to in paragraph 14 of the statement of facts. It was invented by Singer. It is the first machine, family machine, that incorporated the zigzag mechanism. It has a fixed lateral throw of a needle at all times and is a manually-operated machine.

In order to show the zigzag mechanism, I would like to introduce two further exhibits, one a drawing which has in color——

The Court: We will call that Defendant's Exhibit 105A so as to relate it to 105.

(Received in evidence as Defendant's Exhibit 105A.)

Mr. Pettit: And then the mechanism that is taken from the 206 machine and is mounted on a board here and shows the details of the 206 zigzag mechanism.

The Court: That will be 105B.

[fol. 541] (Received in evidence as Defendant's Exhibit 105B.)

The Court: Let me see that mechanism. I think I have seen it before, but I want to make sure.

This Exhibit 105 is a manually-operated zigzag machine.

Mr. Pettit: Yes. I would like to call your attention to the fact that that has a fixed eccentric or a cam with a heart shape, the result of which is that it throws a constant movement to the needle. It has a mechanism by which it can be manually controlled by which the bite, or, in other words, the reach of it can be varied, and the cam is this one on the end that the arm is fixed to, and that is the one that makes the motion of the needle. It gets the zigzag motion by moving the needle laterally.

I would like next to put in as an exhibit the Singer 401 machine. That is the big machine sitting there on the table.

The Court: As Exhibit 106.

(Received in evidence as Defendant's Exhibit 106.)

[fol. 542] Mr. Pettit: And then I would like to put in evidence a drawing of this machine, the interior of the machine, with the zigzag mechanism filled in in color.

The Court: As Exhibit 106A.

(Received in evidence as Defendant's Exhibit 106A.)

Mr. Pettit: And then the 401 mechanism mounted on the board.

(Received in evidence as Defendant's Exhibit 106B.)

Mr. Pettit: Your Honor, I would like to spend a little time with that mechanism.

The Court: All right. Do it down there. Go ahead. I thought I would enjoy myself privately.

Mr. Pettit: I would like to do it where you can see it, certainly, and I would rather do it up here.

The Court: Distance lends enchantment sometimes. You had better come up here, too, Mr. Elkins. Put it over here on that table.

Mr. Pettit: This is a mechanism that involves the stacked cams and the follower. This mechanism is the Johnson invention, the old mechanism. This has the following features: first, the basic one of a single follower. You will [fol. 543] see that there are two columnar metal pieces here, one of which has a follower on it that can be immobilized by moving it to the bottom and letting it fix against these cams which are stationary and have no configurations on them but have different depths, three different cams at three different depths.

When that follower is placed on one of those cams, it is immobilized, and what you have is a stack of cams with a single follower operating from this. This is one of the reasons that the replaceable cam machine has some advantage.

By moving this handle the follower can select any one of the cams, and, of course, each cam has a different configuration. Then there is a connecting means by which the motion can be transferred from the cam through this, over to the needle. That is the fundamental of the Gegauf machine and the Gegauf No. 1 patent. It is the fundamental of the Vigorelli machine and the fundamental of the Singer machine.

The Court: What is?

Mr. Pettit: This mechanism, a stack of cams, a single follower, retractable means of withdrawing the follower, and selecting any one of the cams desired. That is Gegauf No. 1, Vigorelli and Johnson.

[fol. 544] The Court: When you say it is Gegauf No. 1, Johnson and Vigorelli, you mean that that identical claim or claims are found in each one of these three patents?

Mr. Pettit: Each one of these machines. Only one patent could issue on it. Gegauf's was first.

The Court: Are they found in each one of these patent applications? That is what I would like to know. Are they found in each one of the patent applications as being claims asserted?

Mr. Pettit: The claim was not inserted in the Johnson application because Johnson found the Vigorelli machine on the market and because of that knew that he could not place his invention date ahead of the Vigorelli machine. But all of his drawings, the patent that he did get, discloses this mechanism in every detail and, except for the Vigorelli machine, would have claimed this mechanism of the single follower as well as the double follower. But he could not truthfully make the allegation, and he therefore did not put it in his patent. But it is perfectly plain that Vigorelli must have had his conception date before Singer's by quite some margin, which he did.

[fol. 545] The Court: Where does Gegauf No. 1 stand on this?

Mr. Pettit: Gegauf No. 1? May I just introduce in evidence as the next exhibit the mechanism from the Gegauf machine which falls within the Gegauf 1 patent and which is the mechanism that Gegauf claimed in his application.

The Court: As Exhibit 107.

(Received in evidence as Defendant's Exhibit 107.)

Mr. Pettit: I would now also like to introduce next the Vigorelli mechanism which corresponds to these other two.

The Court: Mark that as Exhibit 108.

(Received in evidence as Defendant's Exhibit 108.)

The Court: Let me see if I understand you. 106B embodies the Johnson idea, does it?

Mr. Pettit: Yes, sir.

The Court: And this is taken from Singer 401?

Mr. Pettit: That is correct.

The Court: But it also embodies Gegauf 1, which is the 107, and it embodies Vigorelli, which is 108.

Mr. Pettit: That is correct, sir. Every one of these ideas [fol. 546] are the same.

The Court: When you say every one of these ideas are the same, you mean by that that each one of these devices, 106B, 107 and 108, represents a physical embodiment of the same invention?

Mr. Pettit: This is correct, sir.

The Court: What is that same invention?

Mr. Pettit: A stack of cams having a follower which is

retractable and which can be moved lengthwise to the axis of the cam in order to select any desired cam.

The Court: Then where are these devices or these pieces of mechanism on Exhibit 107? That is the Gegauf.

Mr. Pettit: Here is the stack of cams, here is the selecting means——

The Court: They are set up vertical rather than horizontal.

Mr. Pettit: Yes, vertical instead of horizontal. So is the Vigorelli set up vertically.

The Court: The Vigorelli is done the same way.

Mr. Pettit: Yes, sir, and in each instance there will be a stack of cams, a single follower, a means for the withdrawing of the follower and moving it lengthwise to the [fol. 547] axis of the cam to select the desired cam.

And, your Honor, I repeat the details of that because each and every one of them is an essential element of the invention and of the claim, and unless each and every one of those is present, then the claim is not valid. These mechanisms are just practically identical.

The Court: It is your contention then, or the defendant's contention, that the mechanism in these three machines are in conflict and read on the same invention.

Mr. Pettit: Oh, yes, yes, and that is the reason——

The Court: Does the government dispute that?

Mr. Elkins: That is true as far as the single stack of cams is concerned, the single follower and the means of engaging one cam with that follower. There is something in the 401 machine that is not covered by Gegauf, namely, the other follower.

Mr. Pettit: I will come to that in a minute because I have definitely immobilized that for the express purpose of leaving this a single cam.

Mr. Elkins: Otherwise there is no dispute.

[fol. 548] The Court: So, then, in a contest involving patent rights only one of these three machines could be sustained as being under a valid patent.

Mr. Pettit: That is correct.

The Court: And you say they are in conflict, the Vigorelli, the Gegauf and the Johnson.

Mr. Pettit: And the Johnson, and the claim in the Harris patent.

Now the Johnson. When you say Johnson, there are certain additional features that I will get to in a minute. At the moment I am limiting myself to the stack of cams and the single follower which is the basic idea in all three of them.

And so that you may have in the back of your mind the sequence of events, the Vigorelli machine and concept was ahead of Johnson. Singer acquired the Harris patent which was ahead of both. It then ran into the Gegauf application which was ahead of all of them. The Gegauf 1 ultimately ended up nine days ahead of Harris.

The Court: Is Harris the man from Canada?

Mr. Pettit: Harris is the man from Canada.

The Court: All right. I just want to orient it with reference to these exhibits.

[fol. 549] Mr. Pettit: And I may add that the claim finally allowed in Gegauf No. 1 patent was taken from the Harris Reissue application. The Harris original patent disclosed this mechanism but did not claim it. The Harris patent was bought for the express purpose of getting a reissue, inserting the claims, and using it to do battle first with Vigorelli and then with anybody else. And, like many weapons of war, it served its purpose but was used up in doing it and ended up with everything that it had in it except three minor items stripped out and put into the Gegauf No. 1 when the Examiner put those in Interference.

The rest of the Johnson. The Johnson patent obviously could not include the single cam in a stack and follower mechanism but, in inventing that, he invented items that went with it. One of them is this wonderful mechanism that I cannot operate. I have never been able to operate it. One of the inventions is the dial which both retracts and lets you turn it to select the particular cam desired. That is just a natural part of putting this together. It was all designed together, all invented together, as is this little integrating device here, this integrating plate. It is used in order to let two followers be used, and he did invent [fol. 550] the second follower. That is the primary additional thing that he did invent, the second follower.

In order to have the second follower work effectively, he needed an integrating plate, and he put this integrating plate in here by virtue of which you can use two followers

at the same time. That, too, was part of the invention of this entire mechanism.

So you had here really four features: First was the stack of cams and a single follower; next was the second follower which could be used or could be disengaged; third was this handle and the means of moving the follower; and fourth was this integrating mechanism that let the two be worked together.

[fol. 551] The Court: And neither of these last three are found in Gegauf?

Mr. Pettit: They are not found in Gegauf 1. They are all found in the Johnson patent.

The Court: But not found in Gegauf No. 1.

Mr. Pettit: They are not found in Gegauf 1, they are not found in Gegauf 2, and they are not found in Vigorelli. These were invented by Johnson as he invented the whole mechanism, and these are what was left after the heart of it was taken out. They were just additional items to go along with, improvements or additions to the main idea of the multiple cam and, as you can see, they all worked together in conjunction with it. They put in a second follower, a means of selecting, a means of taking, the handle.

And when you talk about the Johnson patent and its coverage, that is what you are talking about, the three items that I have mentioned here, and you exclude the stack of cams and the single follower.

Before I leave that I would like to point out the great difference between this 401 machine and the 206 machine. You will remember that the statement of facts states that there was four years intervening from the building of this machine. This machine was an entirely new machine [fol. 552] for anybody, Singer or anyone else, and was four years in the final production of it. There was not a single feature of it that could be produced from the old tools. The casing, everything about it, was new, and you will see that it is a great deal more complicated sewing machine than this, Exhibit 105A. It had many features of it other than the multi-cam features that are new to sewing machines. Some of them are mentioned in a letter that I will produce in a moment.

In the statement of facts you will remember that Singer produced the 206 machine, the manual machine, and sold

it in Europe from 1934 up to the war, but had never brought it into the United States or sold it here. After the war it continued manufacturing the machine but in Clydebank instead of in Germany, its plant there having been seized by the Russians, and continued to sell it in Europe.

In 1948 a similar machine to the 206 was brought in by Necchi, and by 1951 it had demonstrated its marketability and the demand for a zigzag machine, and the result was that Singer then started importing and selling the 206 machines into the United States but it also realized that it had to have something more. Once it got to selling a [fol. 553] zigzag machine in the United States, it needed more than that, and from that resulted the 401 machine.

But that was a machine that was to take some time to come out, and in the meantime, in fact just a few days before or a few after, I have forgotten which, but after this was in its final stages, Singer asked its men to produce an improved 206 which became the 306 machine and had a replaceable cam. Instead of the cam that was in the machine with the fixed throw, it had the replaceable cam.

I would like to offer the Singer 306 machine.

(Received in evidence as Defendant's Exhibit 109.)

Mr. Pettit: And the chart showing the mechanism.

(Received in evidence as Defendant's Exhibit 109A.)

Mr. Pettit: And the mechanism itself placed on a board.

(Received in evidence as Defendant's Exhibit 109B.)

Mr. Pettit: Your Honor, you will see that this was a machine that could be produced—if I may put these up [fol. 554] here again—by looking at these you will see the mechanism is almost identical except for the fact that the eccentric has been removed and a cam has been placed on the opposite end, and then the same mechanism controlling it, the handles. This portion of the machine remains exactly the same, and this is put in in order to transmit the motion from here instead of having it transmitted from over here. I don't know how this will all appear in the record, but I am pointing to portions of the mechanism. In each case the arm is moved and moves the needle laterally.

[fol. 555] This is the mechanism that Singer's Patent Department was talking about when it asked whether, with a removable cam here, using the same mechanism here in conjunction with the removable cam instead of the fixed one, it would be patentable. This is the mechanism that they concluded would not be patentable and that they would not have any worry about.

The Court: And that is a removable cam.

Mr. Pettit: This is the removable cam. That is shown best on the machine itself over here. That is this machine, and you can——

The Court: It is on the exterior of the machine.

Mr. Pettit: It is on the exterior of the machine, and you, of course, can have as many cams as man can design. There is absolutely no limit to the potential number of cams that can be used. The difference between the two, between the 401 and this, is that in the 401 there is the limited built-in number which then can be selected by the handle. Here there is an unlimited number that can be put on manually by the person using the machine, and she selects any one she wants. When that is done, there is absolutely no difference.

[fol. 556] You can take the 401 machine and you will find that on the top of it there is also a replaceable cam. There is a replaceable cam that goes on top of the stack that you saw in the 401 mechanism. In fact, it is right there now. This can be removed, or you can have an identical cam in the stack. And, if you put this cam with this shape in the stack, then it wouldn't make any difference whether you selected the cam that is in the stack or the removable cam, you would get exactly the same design, because it has this design and the throw is identical. So far as the operation of the machine and the design that results is concerned, there is absolutely no difference between a cam that is in the machine and a cam that is placed on it once they are placed in position to sew.

That machine was hurried along because the market needed it, but Singer wanted an even better one and wanted the multiple cam idea to be used as soon as possible. The result was that they requested their engineers to design a multiple cam mechanism but one that would be usable with

the 306 machine, and the result was that they produced the 319 machine.

I would like to offer that machine in evidence.

(Marked Defendant's Exhibit 110 in evidence.)

[fol. 557] Mr. Pettit: And the chart.

(Marked Defendant's Exhibit 110-A in evidence.)

Mr. Pettit: And the mechanism that goes in it.

(Marked Defendant's Exhibit 110-B in evidence.)

Mr. Pettit: As you may see by looking at the last exhibit, they still use the same mechanism in the 306 for the purpose of control as was used in the 206. There has been superimposed on the shaft that bore the replaceable cam a set of multiple cams, each with its own follower, a rather simple arrangement and a little different treatment than the 401 but fundamentally the same concept of stack of cams and a follower to take off the information, except that here there was a follower for each cam.

This, if you will notice the chart, is just practically the 306 machine with this little mechanism placed here. It required no change in the machine that was to be manufactured. Every piece of mechanism that is not put in color here was in the old 306 machine. Again, little tooling was needed to get this machine in production and sale, and [fol. 558] this was the star Singer machine pending the ultimate production and getting into sale of the 401 machine. This is the machine, your Honor, which they sold and are still selling all over Europe.

Mr. Elkins wants to know whether you can engage two of these at the same time, and the answer is yes. You can engage two or more of them and get a different throw by whether you have one, two or three followers operating. [fol. 559] I would like to show at this moment these two multi-cam machines. This is a machine manufactured by Sankyo Seiti in Japan. It is a machine that infringes Gegauf No. 1. It is similar to the Singer 401 machine. It is an infringing machine and is one of those that was imported and, I think, will appear among the figures of imports.

The Court: You had better mark it in evidence if you are going to show it to me.

Mr. Pettit: Yes, I will mark it in evidence.

(Received in evidence as Defendant's Exhibit 111 in evidence.)

The Court: You say this Defendant's Exhibit 111 infringed on what?

Mr. Pettit: Infringed on Gegauf No. 1. It is similar to the Johnson machine or the 401.

The Court: How did it infringe? In what respect did it infringe?

Mr. Pettit: It has a stack of cams, a single retractable follower movable lengthwise to the axis of the cams to select the cam desired, and has the same mechanism for transmitting the motion to the needle. It is a plain infringement of the Gegauf No. 1 and practically a duplicate of the 401, Singer 401.

[fol. 560] Mr. Elkins: If your Honor please, that is in the nature of——

The Court: That is his opinion.

Mr. Pettit: It has a single follower.

The Court: Up to this point, Mr. Elkins, have you any dispute about the mechanical explanations of these various exhibits which have been received?

Mr. Elkins: None whatsoever, your Honor, until opposing counsel just arrived at the point of describing this machine as being practically the same as the 401. It is not.

The Court: But it does embody Gegauf No. 1.

Mr. Elkins: It does embody Gegauf 1.

The Court: That is all we are concerned with.

Mr. Elkins: As does the 401.

The Court: I am not concerned with——

Mr. Pettit: I will restrict my statement. That is what I meant by it.

The Court: —what we used to call a Chinese copy, in this case a Japanese copy. But there is no dispute but what this machine represents an embodiment of Gegauf No. 1?

Mr. Elkins: That's right.

[fol. 561] The Court: And in that respect it is an infringement on Gegauf No. 1.

Mr. Elkins: That's right.

The Court: All right.

Mr. Pettit: Right next to it, your Honor, are machines which I offer in evidence. I introduce in evidence another machine made by the same company, and imported into and sold in the United States.

(Received in evidence as Defendant's Exhibit 112.)

Mr. Pettit: This machine has been referred to in charts, in stipulations, as the old design. That is Exhibit 111, the one you are now looking at. Exhibit 112 is referred to as the new design.

The Court: Made by the same company?

Mr. Pettit: Made by the same company.

The Court: That is a Japanese machine?

Mr. Pettit: A Japanese machine made by the same company.

The Court: And what do you say with reference to this and the Gegauf No. 1?

Mr. Pettit: This is a non-infringing machine as far as Gegauf No. 1 is concerned, and you will notice that it has the barrel staves instead of the stack of cams.

[fol. 562] The Court: I see. The cam effect is produced by these ridge inserts?

Mr. Pettit: That's right, and the follower moves across the ridge inserts instead of having a stack of cams.

The Court: Concentric stack of cams.

Mr. Pettit: That's right.

The Court: And you say that it performs the same operation, serves the same mechanical purpose, but that purpose and that function is achieved without an infringement of Gegauf No. 1?

Mr. Pettit: That's correct, sir. The follower takes the information from here, transposes it to the needle through the mechanism.

The Court: Am I correct in concluding that it is the defendant's contention that this machine, Sewmor, Exhibit 112, functionally produces the same result as Exhibit 111——

Mr. Pettit: That's correct.

The Court: —without an embodiment or employment of Gegauf No. 1?

Mr. Pettit: That's correct. I don't believe that the gov-

ernment raised any question about it, but I cannot speak [fol. 563] for the government.

Again we are talking——

The Court: Wait a minute now. They are consulting on it.

Mr. Pettit: Again I want to say we are talking about the single follower mechanism. This is the fundamental single follower concept, a stack of cams.

Here are two charts which I would like to put in evidence. The first one goes with Exhibit 111.

(Received in evidence as Defendant's Exhibit 111A.)

Mr. Pettit: And it shows in color the zigzag mechanism embodied in it.

The next chart goes with Exhibit 112.

(Received in evidence as Defendant's Exhibit 112A.)

Mr. Pettit: I show these two exhibits which, respectively, show the two mechanisms. Exhibit 112A is the non-infringing; Exhibit 111A is the infringing.

The Court: Where is the follower on that exhibit, Exhibit 112A?

Mr. Pettit: Here (indicating).

The Court: Indicating in the back. I see.

All right, I see that. It presses on that rotary wheel [fol. 564] that contains the cams or the ridges. All right, I see it.

Mr. Elkins: I think your Honor was asking a moment ago as to what the government concedes. The government concedes that Defendant's Exhibit 112 is not covered by the Gegauf patent. It concedes that the function of the machine and the work product of the machine stitch patterns may be the same.

We do not agree as to the efficiency of the mechanism of this Exhibit 112 being equal to the efficiency of Exhibit 111.

The Court: Just what do you mean by the efficiency when you say the work product is the same but the efficiency is not the same? What do you mean by that?

Mr. Elkins: For example, your Honor——

The Court: One is more durable than the other?

Mr. Elkins: Several things, if your Honor please. De-

fendant's Exhibit 111, which is under Gegauf, has a number of cams, and any time one of these cams is marked or scratched or destroyed, it may be taken off and replaced by another cam, whereas in defendant's Exhibit 112 it appears that, if one surface goes off this drum, then the whole drum——

[fol. 565] The Court: You replace the drum.

Mr. Elkins: I should think so.

Mr. Pettit: Where does that appear from?

The Court: He says if one of these ridges——

Mr. Pettit: I don't know whether these can be snapped in and out or that it cannot be made so that it could, if there is desirability to that. I don't know that it appears any place that that is impossible.

Mr. Elkins: I am not meaning to testify; I am not testifying; I am merely describing the extent of the government's concession, your Honor.

The Court: You had better give me some testimony, Mr. Pettit, that this substitute for the removable cam filed in Exhibit 112, which takes it out of the Gegauf No. 1, may be functionally replaced and in what way it can be replaced.

Mr. Pettit: I will find out whether it as of the moment takes the whole thing or part of it. I will only say that if at the moment it takes the whole thing, there is no reason why one cannot be designed which will have replaceable cams there as well as the other.

The Court: It would seem so to me. Like the spokes on a wheel, to replace the spokes.

Mr. Pettit: And if the wheel were so designed that it [fol. 566] could not be done, I don't know any reason why the wheel could not be redesigned so that it could be done.

The Court: There are all kinds of wheels.

Mr. Elkins: And as to the extent of our concession, your Honor, we note from the description of opposing counsel that the follower used in Exhibit 112 has a back-and-forth motion as opposed to the follower in Exhibit 111, which merely rides on the cam and is otherwise motionless; that the follower in Defendant's Exhibit 112 is constantly moving first to the left and then stops, then to the right and then stops, and so forth, back and forth over the entire surface of a particular cam surface there.

Mr. Pettit: As I understand it, he is saying when you

get around a patent, there are some features of it that are a little different from the patent. If it wasn't so, you would still be infringing the patent.

The Court: That is so.

Mr. Elkins: And in essence, your Honor, I am trying to outline the attempt of——

The Court: The united work product of both of these machines is the same.

Mr. Elkins: Right, your Honor.

[fol. 566a] The Court: And Exhibit 112 is not an infringement of Gegauf No. 1.

Mr. Elkins: That is true, your Honor.

The Court: And Exhibit 112 may be used in the household as a substitute for 111.

[fol. 567] Mr. Pettit: I call your attention——

The Court: I asked him a question.

Mr. Pettit: I am sorry.

Mr. Elkins: I do not want to testify, your Honor. We are merely representing that it does not appear that both machines are alike in relation to their mechanisms. There might be a difference in the effectiveness and the durability of the mechanisms of the two machines. We do agree that the stitch pattern created would be the same in each machine.

The Court: And the household work product would be the same.

Mr. Elkins: It would be.

The Court: That is another way of saying that one could be substituted for the other.

Mr. Pettit: I call your attention to the details with respect to this machine, as set forth in paragraph 95 of the statement of facts.

The Court: Gentlemen, I will have to recess at this time. I have some lawyers coming in.

All right, tomorrow morning—at what time—half past ten all right?

(Adjourned to Wednesday, May 10, 1961 at 10.30 o'clock a.m.)

[fol. 568] UNITED STATES OF AMERICA,

vs.

THE SINGER MANUFACTURING CO.

New York, May 10, 1961, 10.30 o'clock a.m.

(Trial resumed.)

Mr. Elkins: If your Honor please, I would like to make a short statement so as to clarify the extent of the government's concessions in relation to Defendant's Exhibit 112A. That is the sewing machine mechanism, your Honor, which is not covered by Gegauf patents.

The Court: That is the one with the barrel stave design——

Mr. Elkins: Yes.

The Court: What I call the barrel stave design.

Mr. Elkins: That is exactly the one.

The Court: Are you changing your mind overnight—have you changed your mind and your position?

Mr. Elkins: No, your Honor, if I may clarify it, please.

The Court: All right.

Mr. Elkins: We concede that it is not covered by the Gegauf patent, Gegauf No. 1. We also concede that it is [fol. 569] a machine-carried multiple-cam machine, as we have defined it in the agreed statement of facts, the essential part of which I will read to the Court, if I may.

"A household sewing machine which, in addition"——

The Court: You are reading from what now?

Mr. Elkins: The agreed statement of facts, paragraph 8(c) on page 4.

The Court: All right.

Mr. Elkins: We concede that it is "A household sewing machine which, in addition to straight stitches, produces without any artistry on the part of the operator, various ornamental and functional zigzag stitch patterns, the preselection of which must be made by the user to a device such as a dial, handle or knob, located on the exterior of the machine"—and we want to add to that, your Honor,

the limit of the concession—we cannot concede that it is the functional equivalent of the mechanism in Defendant's Exhibit 111A, and that, as your Honor recalls, was a stack of rotary cams.

The Court: You are using a word of art when you use the phrase "functional equivalent."

[fol. 570] What do you mean when you say "functional equivalent"?

Mr. Elkins: We mean to say, your Honor, that we cannot concede that its operation is as efficient, as effective or that its work product is as good as the mechanism presented in Defendant's Exhibit 111A.

The Court: In what respect do you contend it is not as efficient?

Mr. Elkins: I am saying, your Honor, that we cannot concede that it is.

The Court: No. I asked you in what respect does the government contend that this barrel stave cam machine—I call it that in describing the cam—in what respect do you maintain there is this difference in work product?

Mr. Elkins: May I say first, your Honor, that if it appears or if it is so that defendant is offering this barrel stave machine as being the equivalent of the rotary stack type of machine which is represented by the Gegauf patent, then we think that the defendant should, in presenting the machine, in trying to establish that point, do so by testimony rather than from statements of counsel.

[fol. 571] The Court: Well, I indicated that might be desirable. I understand that it is simply the defendant's contention with respect to this particular machine, that although the mechanical design is different, particularly with reference to the design of the cam, that it produces the same work product when put to use as does the Gegauf machine, and I understand it is the defendant's contention that this barrel stave cam machine is not an infringement of Gegauf 1, and that they are without any patent rights under the Gegauf patent to attempt successfully to bar its importation by the Japanese manufacturer.

Do I correctly state your position in substance, Mr. Pettit?

Mr. Pettit: Yes, sir.

[fol. 572] Mr. Elkins: And there is nothing in what you

have said, your Honor, which is not within the government's concession except that we cannot concede that the work product that is produced by this barrel stave mechanism is equivalent to the work product of the rotary cam type machine.

The Court: But with that one exception you do not change your position as stated last evening.

Mr. Elkins: And as stated by your Honor here, and that's about it, your Honor.

The Court: I have suggested to Mr. Pettit that he produce a witness, if he can, who will testify as to the result of the operations which can be secured and of the work product which can be secured from this Japanese machine which has a machine-carried multi-cam apparatus zigzag machine which does not infringe on the Gegauf patent. I understand he was going to do so.

Mr. Elkins: Thank you.

The Court: Yes. All right. You may continue.

There was another point about that machine, and I thought it was going to be checked into over the recess, and that is whether or not these, I call them, barrel stave cams are replaceable or whether the entire cam which represents [fol. 573] all of the barrel has to be replaced. Have you checked into that?

Mr. Pettit: I have checked into it, and I have been informed—I am not sure of this; I want to check into it further, but the information I have obtained is to this effect: that in either instance, whether you are speaking of the cam mechanism in the Singer machine or the barrel stave mechanism, if one of the cams is injured, the whole stack would have to be removed from the machine and a mechanic would have to replace the damaged cam.

The Court: Does that replacement in this barrel stave mechanism require a replacement of the entire barrel or can there be sort of a cooperage operation, replacement of only one stave?

Mr. Pettit: That is my understanding. A mechanic can install the particular barrel stave.

The Court: The particular stave or particular cam segment effect.

Mr. Pettit: I do not want to be representing that as the

fact here. That is my present understanding, but I want to check into it to make sure.

The Court: That is the way it appeared to me to be from my visual inspection of it, but I am not a mechanic or machinist.

[fol. 574] Mr. Elkins: In relation to these matters, your Honor, can we have it in testimony? I believe that we would have difficulty without that.

The Court: Yes, we will have it in testimony. If you will make a little note of that on your yellow pad, I would appreciate that.

All right, now, continue along.

Mr. Pettit: Yesterday we introduced a machine covered by paragraph 95 of the statement of facts. I would now like to introduce a machine of the type covered by paragraph 94 of the statement of facts. This is another non-infringing machine, your Honor.

The Court: This is manufactured where?

Mr. Pettit: This is manufactured in Japan.

The Court: Japan. And it has a tag on it which says "Universal."

Mr. Pettit: It is called the Universal TViewer.

The Court: Is there any objection to this being received in evidence?

Mr. Elkins: No objection to it being received in evidence, your Honor.

(Marked Defendant's Exhibit 113 in evidence.)

The Court: Are you saying that this machine, Defend-[fol. 575] ant's Exhibit 113, is a multi-cam machine-carried zigzag machine which does not infringe on Gegauf No. 1?

Mr. Pettit: Yes, your Honor, and that is so stipulated, if you will look to the paragraph number that I just mentioned, paragraph 94 of the statement of facts.

The Court: Is it the defendant's contention that this machine, now Exhibit 113, produces the same work product?

Mr. Pettit: That is correct.

The Court: The same work product as your Singer machine which embraces and employs the Gegauf No. 1 patent?

Mr. Pettit: That is correct.

The Court: Will you make a note on that to have your witness testify as to that?

Mr. Pettit: I would like to offer as an exhibit a drawing of the same machine with the zigzag mechanism in color.

(Marked Defendant's Exhibit 113-A in evidence.)

Mr. Pettit: Your Honor, you will notice that the difference here is that there is a flat disk with cams on top, a circular disk.

[fol. 576] Mr. Elkins: Excuse me, Mr. Pettit. I believe that this should be in the form of testimony. We find extreme difficulty in filling in blanks here and there inasmuch as there is no witness on the stand.

The Court: This is very plain. Why do you need a witness for this? He shows me the machine. It appears from a visual inspection that the machine has a cam somewhat in the nature of a phonograph record, that the follower appears to be an arm similar in general construction to what we find holding a needle, and I don't see any need for testimony on this.

If you want testimony, produce a witness. This is as plain as the nose on my face, to me, when I look in the mirror, and I have quite a big nose.

Mr. Elkins: If your Honor please, while opposing counsel is making his statement, he might—I don't mean through any design—omit an essential fact where there is no witness on the stand by which we can fill it in.

The Court: He is calling to the Court's attention things which are obvious to the Court without him making the comment, but he thinks the Court needs that aid and assistance. And, while at times I might be annoyed, I try not to be. I can see it without his comment, but he is trying [fol. 577] to help the Court.

For instance, don't you see that cam on this Defendant's Exhibit 113?

Mr. Elkins: Yes, I do, your Honor.

The Court: You have just pointed to it. It is the pink mechanism which apparently is like a phonograph record. Now, don't you see the follower arm on this Defendant's Exhibit 113?

Mr. Elkins: I do, your Honor.

The Court: Where is it?

Mr. Elkins: Right there, your Honor.

The Court: Right. Perfect. You don't need a road map, do you?

Mr. Elkins: Your Honor, I believe that we should have testimony as to the drawing which is Defendant's Exhibit 113-A, and I believe that we should have testimony or the defendant should produce testimony——

The Court: I suppose technically speaking he is entitled to it, Mr. Pettit. Will you produce, some time during the trial, the man who made these drawings, these sectional drawings, to say that they accurately represent on the scale model these exhibits to which we have referred.

Mr. Pettit: And I will have him testify as to what they [fol. 578] are.

The Court: Not too much testimony, but simply sufficient to satisfy Mr. Elkins.

Mr. Elkins: Your Honor, I see no reason why we couldn't have the testimony now.

The Court: No. Well. I see a reason. I am having a discussion now of the government's exhibits. In order to help the Court understand the government's exhibits and their significance, Mr. Pettit feels, rightly or wrongly, that he should explain to the Court the mechanism of these various machines. I thought he might save himself that trouble, but he is a careful lawyer and he wants to have it in the record. Perhaps, if I were in his position, or if you were, you would also want it in the record. So I find no fault with him.

Mr. Elkins: We do not mind it being in the record, your Honor, but a description of these machines will necessarily——

The Court: Let's get on, Mr. Elkins, please. Let's get on and try the case.

Go ahead, Mr. Pettit.

Mr. Elkins: I am holding in my hand——

The Court: There is no matter before the Court which requires a ruling at this time. Mr. Pettit's statements are [fol. 579] not evidence.

Mr. Pettit: Your Honor, I could with just as much ease——

The Court: No, please don't begin to answer comments. Continue with what you were going to do.

Mr. Pettit: I want to point out to you that what I am saying here is something that is taken even from the statement of facts that he has agreed to, so there is not much problem. If there is any misstatement or mistake I make, it can be corrected by looking at the corresponding paragraph containing the statement of facts to which Mr. Elkins has agreed.

The Court: All right.

Now will you give me that machine, Defendant's Exhibit 113, up here so I can see it? I want to see something. Do you want to come over while I turn the wheel? I want to see the way the cam rotates. I want to see the operation of the follower.

[fol. 580] The Court: Now it is set by this manual dial on the front, and as it rotates I can see that the follower follows the configurations of the cam.

Apparently the cam is pink plastic. Apparently it provides for six variations or six cams.

All right.

Mr. Pettit: Your Honor, I would like to call your attention to the fact that the stipulation of fact cites as examples of such a machine-carried multiple-cam machine are the Feather Universal TViewer Model FSZ120, which is that machine (indicating), the Kyokuto Modern Model No. 116, the Kyokuto Vogue Stitch Model D and the Kyokuto Alden's Cam 3-in-1.

In other words, they are two manufacturers and four different models of that type of machine that we know of.

The Court: The court observes it is a rather attractively designed machine, this Exhibit 113. Visually it has—of course I do not represent the female point of view, but apparently it has the same design appeal as one of the Singer machines—if not better—according to modern concepts of domestic decoration.

All right.

Mr. Pettit: I would like to introduce in evidence a ma-
[fol. 581] chine made by Borletti.

The Court: Who is Borletti?

Mr. Pettit: That is a European manufacturer.

The Court: Where does he manufacture? Where does this company manufacture?

Mr. Pettit: In Europe.

The Court: Where in Europe, Italy? It is an Italian concern?

Mr. Pettit: Yes, it is an Italian concern.

The Court: All right.

(Received in evidence as Defendant's Exhibit 114.)

The Court: Where is this described in the Statement of Facts?

Mr. Pettit: This is paragraph 96 of the Statement of Facts.

The Court: And you say this is a multi-cam machine-carried zigzag machine?

Mr. Pettit: Yes, sir.

The Court: And where is the cam on this?

Will you open the door and show me.

(The Court examines exhibit.)

The Court: I see.

Mr. Pettit: The difference between that machine and the [fol. 582] other—and the reason it is not infringing is that the cam follower is not retractable from the cams.

The Court: And you say that this Borletti machine, which is now Exhibit 114 in evidence, is not an infringement?

Mr. Pettit: That's correct, sir—and that is so stipulated in paragraph 96 of the Statement of Facts.

The Court: What is this sketch here?

Mr. Petitt: This sketch, which I would like to offer in evidence, is a drawing of the machine with the zigzag mechanism in color.

(Received in evidence as Defendant's Exhibit 114A.)

The Court: I see it. A very ingenious piece of mechanism. It appears to work, too.

Mr. Pettit, sometime during the case, if you can bring somebody in to show us how these things actually operate by stitching—can you do that?

Mr. Pettit: I do not know whether we have all these machines set up for operation. I will check and see if we can do that.

The Court: If you can—I see the way it works. It is quite plain, isn't it, Mr. Elkins?

Mr. Elkins: I see how it works.

[fol. 583] The Court: You see it?

Mr. Elkins: Yes.

The Court: It is quite plain.

All right.

Now you have shown me two Japanese machines and this Italian machine—three machines so far.

Mr. Pettit: Three non-infringing machines.

The Court: Yes.

Mr. Pettit: Three different types of non-infringing.

The Court: Yes.

Mr. Pettit: Those are the only exhibits that we have on the non-infringing type at the moment.

This machine I offer in evidence—this is a Japanese-made machine. That is a non-infringing machine, but it is a barrel stave type. I want to show the set-up under which the barrel staves can be removed and it becomes a manual machine.

The Court: And that is not an infringing machine.

When we speak of an infringing machine we mean a machine that infringes Gegauf 1.

Mr. Pettit: Yes.

The Court: Mark that in evidence.

What paragraph is this described in?

[fol. 584] Mr. Pettit: Paragraph 94 describes the same machine that we had introduced before—no, this is not the same type.

The Court: No, this is Vogue.

Mr. Pettit: It is the same machine as mentioned in paragraph 94.

(Received in evidence as Defendant's Exhibit 115.)

Mr. Pettit: Your Honor, that is a non-infringing mechanism. On its removal, this machine becomes a manually operable machine.

The Court: And this whole mechanism for a zigzag machine can be physically lifted out?

Mr. Pettit: Physically lifted out and put back. When it is in, it is a multi-cam machine; when it is out, it is a zigzag machine.

There is a feature about this——

Mr. Elkins: What paragraph is that in, Mr. Pettit?

Mr. Pettit: 94.

The Court: It is marked Exhibit 115.

Mr. Pettit: This machine can be covered by the Harris patent——

Mr. Elkins: This is a statement, not testimony.

[fol. 585] The Court: He is explaining the machine. I do not see that we are too much concerned with that because the real charge is—the basic charge of the government is that Gegauf No. 1 is the so-called fly in the ointment.

Mr. Elkins: That is not exactly it, your Honor. We charge that these patents were grouped in Singer. There were two that they got from Gegauf; Gegauf 1 and Gegauf 2. They had three of their own to cover it.

Mr. Pettit: Your Honor, the reason I wanted to show this machine is because it is of a construction used by many other Japanese machines that causes the machine to violate the Harris patent.

I want to point out the mechanism that is in there which violates the Harris patent when used in conjunction with a mechanism that violates Gegauf No. 1.

It violates Harris only when it is used in conjunction with that mechanism, so that when used with this non-infringing mechanism it does not violate the Harris patent.

It is just the concentric that throws the needle and the cams or the mechanism—that goes through this concentric first, and then to the needle. In the 401 the concentric is [fols. 586-587] not there. It goes direct through the Pitman arm to the needle bar.

* * * * * * *

[fol. 588] Discussion of Significance of Exhibits By Mr. Pettit

Your Honor, the first letter that I want to discuss is Government's Exhibit 1, a letter of October 28, 1952. This [fol. 589] letter, as I pointed out before, was occasioned by the discovery of Singer of the Vigorelli machine which had a removable stack of cams and a single cam follower that moved lengthwise to the cam axis—and in view of the fact that it had this removable stack of cams, it had two concepts in it: one which related to the use of the old 206 type of mechansim in conjunction with the removable

cam, and a question is raised as to whether using the removable cam—and it did not make any difference whether it was one or a stack or a half dozen—the question was, once the concept was originated of using a removable cam with the old type of mechansim, in the 206, was that patentable.

This letter is directed to that problem, and that problem only, but it has significance in the light of what the government used it for, although it has no significance in this case in so far as it merely relates to the 306 machine.

The government offers this in evidence in order to show Singer's predisposition to enter into a cross-license agreement even though it had power to cast doubt on the validity of the patent.

I do not know whether they realize what that concept leads to, when applied to the facts that we have in this [fol. 590] case; but it runs all the way through the Government's case and is applied with reference to almost every letter and every agreement—and although your Honor asked them whether that was not the type of thing that almost every sensible manufacturer did—and some pages later Mr. Elkins answered yes, and in effect said he would discuss the letter no further, he and Mr. Weinstein repeatedly came back to the principle involved, and I just want to consider that principle for a minute as it is applied to this case.

Singer does business all over the world—and that is set forth in the statement of facts. This stems from the proposition that if Singer goes to a patent owner seeking a license, and the patent owner says, "If you will give me an agreement that you will not attack my patents, you will not attack my patent applications, I will give you a license under all of them."

Normally, Singer would be delighted with that arrangement and would certainly accept it, but Mr. Elkins and Mr. Weinstein say, No, that it seems to be not only the moral but the legal obligation to fight the battle of the natives of every country in which a patent might be taken out by this owner who has his own patent and correspond- [fol. 591] ing patents in many countries of the world.

Under that philosophy we would have to put on our armor, consisting of the creation of 155 patent attorneys

in 155 countries, if it happened to extend that far, and we would go into the mountains of Nepal to protect the Nepalese; we would go into Saudi Arabia to protect the Arabs, and into the Congo to protect the Africans. We would have to fight if we have any idea that a patent was too broad, whatever that may mean.

And Mr. Weinstein has gone so far as to say that the agreement by which we refrained from interfering with the European owner of patents throughout the world is illegal per se because of the provisions that we won't interfere with it no matter how broad he has it.

Now that theory, I think, is just wholly and completely untenable, both in theory and in law and in practicality.

I think they make it for the purpose of showing evil intention on the part of Singer, and then for the purpose of bringing that evil intention into the United States, although the agreements made are quite different in what they say with respect to the foreign countries and the United States, but they also do it without a realization that the [fol. 592] foreign-country situation is quite different from that in the United States.

In most of these countries, certainly in large numbers, they do not even have inspection, and in some of those where they do have them, they are filed without any form of contest, and any person in the world is free to go in and contest the patent at any time.

Now an example of what would happen is rather indicated in the next letter, Defendant's Exhibit 5, dated December 16, 1954, addressed to Mr. Waterman. That letter, on page 4, points out that there was a "recently published Brazilian patent application," and it gives its number and its date and was filed by Brutsch & Co.

It goes on to specifically say that the Singer patent department thinks the claim is too broad.

You will remember that this is the same country in which Vigorelli had a patent application and in which Mr. Elkins pointed out that we had considered the Vigorelli patent broad, and that notwithstanding that we obviously, with evil intent, had withdrawn our opposition in Brazil—apparently much to the detriment of the Brazilians.

Here is the same country; here is the same opinion that [fol. 593] it was too broad.

Now it just happens that this is a good example of what would happen to Singer if it just went on the theory that it should always do battle, no matter what it could get without it.

It filed briefs; filed oppositions. They accepted the briefs and still have them, but the opposition was rejected.

The net result is that today Singer cannot sell its 401 machine——

Mr. Elkins: Excuse me, your Honor. This is not in the exhibit.

Mr. Pettit: It will be; I will get it in evidence, I will put it in.

This shows that this was too broad. It shows that an opposition was filed. You cited the letters that showed the documents went there, and the Vigorelli documents—and this thing was pointed out——

The Court: How are you going to establish this?

Mr. Pettit. I will have the letters that show——

The Court: Have we marked them already?

Mr. Pettit: No, I have not.

The Court: You had better show them to Mr. Elkins and [fol. 594] let him look at them—during the recess.

Mr. Pettit: Now, your Honor, as a result of that we could not sell the 401 machine in Brazil today unless or until we go into Brazil with another proceeding to have the patent declared void, in so far as it applies to the 401 machine, and win the patent.

That is a very important qualification, because that is the procedure that is available in almost all these countries to anybody who has any interest in it.

Singer's saying that it will not interpose an objection is rather meaningless because anybody who has an interest in having the patent cut down if it interferes with them can do so at any time in another proceeding.

This letter of December 16th also shows that Singer recognized that competitors' "multi-cam and cam selector devices were developed prior to the conception" of Singer's construction, and that there was a possibility that competitors "may obtain patent claims in one or more countries including the United States," which would be infringed by the Singer 401 machine.

That appears at the bottom of page 2.

[fol. 595] I will read the bottom of that page:

> "Since it would appear that each of the competitors' multi-cam and cam selector devices were developed prior to the conception date of present Singer construction, there is a possibility that one of our competitors may obtain patent claims in one or more countries including the United States, which claims may be infringed by the present Singer machine."

It also shows that Singer believed that among competitors who might obtain patents containing such claims were Vigorelli, Brother, Husqvarna, Brutsch who has just been mentioned, and possibly others. On page 3 it points out that Japanese Brother has a machine which indicates that it might be ahead in the field. It points out Brutsch on page 3. It points out Husqvarna on page 5. Thus it shows an awareness, and a complete awareness, of its danger in the field.

The letter also shows that due to the fact that pending applications were not open to inspection until published for opposition, it was impossible to predict who, if anyone, would acquire dominating patents in the field, and I will read from page 5:

> "Because pending patent applications of our com-
> [fol. 596] petitors are not open to inspection until they are published for opposition, it is impossible to predict who, if anyone, will acquire dominating patents in this field."

And finally Mr. Stanford advised Singer that in light of the foregoing the manufacture and sale of its multi-cam constructions might result in infringement claims of patents. He states on page 6:

> "The manufacture and sale of the multi-cam constructions devised by Singer may ultimately result in the infringement of claims of patents which may issue to one or more of our competitors."

For a patent man that is just a plain statement that our constructions are headed for various infringement suits.

He says:

> "However, if the Company wishes to produce and market machines incorporating the stacked cam arrangement we would recommend that it proceed to do so and that each question of infringement of a competitor's patent be dealt with when and if it arises."

At that time, of course, Singer was not aware of the constructions of the claims and what might come out of them, but it was aware that it was in grave danger in the [fol. 597] manufacturing and sale of its machines. If you looked at paragraph 26 of the statement of facts, you would see that by April 22, 1955, Singer acquired copies of two Italian Vigorelli patents.

The first of these patents, which had a filing date of January, 1953, which was earlier than Johnson's conception date of his machine, related to a removable stack of cams with means of taking information from any cam. It might have covered the 319 as well as the 401 machine and probably would have and, absent Gegauf and Harris, it would probably have covered them today. So Singer had the knowledge that the Vigorelli single cam machine would be ahead in the United States. This was at a time, your Honor, before Singer had acquired the Harris patent. So as of this moment it looked as if Vigorelli would be ahead in the United States on the single follower.

The second patent, with the filing date of September, 1953, subsequent to Johnson's conception date, related to taking the information from two cams at the same time. That was the heart of what was left of the Johnson application after they had left out of it anything relating to the single follower and the multiple cam. Thus the situation [fol. 598] was that, although Johnson would dominate the Vigorelli disclosures in its second patent which related to taking information from two cams, the second Vigorelli patent would dominate the Johnson construction in Europe wherever Vigorelli had his patents. That, of course, was the situation that gave Singer great concern, and it proceeded to see what it could do about it, and it looked diligently for patents that it might acquire, and on June 16th it found the Harris patent.

This patent disclosed a mechanism which would and could sustain claims covering the stack of cams and the single follower. However, it did not have a claim asserted to that mechanism. It was therefore necessary to reissue the patent, get a reissue application, and insert the claims in them.

Singer bought this patent for three reasons, as appears from the Williams memorandum of June 16, 1955, Government's Exhibit 3. It shows that Singer obtained the patent, first and foremost, in the hope that it could get a patent in the United States based on covering the multi-cam mechanism; second, that if it was not able to do that, it might at least get into an interference for the purpose of [fol. 599] learning the situation and learning who had the prior claim in order to be in a position to negotiate with them; and, third, with the hopes and expectations that, if it found that no one could get a patent, it could then be assured that it could go ahead and sell its machine in the United States.

In acquiring this patent, Singer at the same time acquired from Harris all of his corresponding patents that had been acquired in various countries. They are listed on page 7 of the Williams memorandum. The net result is that up to this time Singer has been desperately looking for means of protecting its commerce. It has now gotten an instrument that at least it can use to fight with.

It proceeded to put the claims in order in the Harris Reissue application, and in fact it was ultimately the claim put in there by the Singer Patent Department, Claim No. 22, that was used by the Patent office to suggest to various persons the possibility of an interference if they could meet the priority date requirement.

That notice, by the way, was sent to Vigorelli, sent to Gerauf, and sent to Johnson, and it was interesting that it was sent to Johnson because Johnson did not even have [fol. 600] a claim in on the single follower feature, and it was sent to him because it was such an intergral part of all the disclosures in the Johnson application and so much the heart of his whole machine that the Patent Department even sent a notice to him to see if he wanted to contest it.

As we will show later, neither Vigorelli nor Johnson could meet the priority date requirement that would establish even the right to get into interference, and therefore

the interference was ultimately set up only between the Gegauf and the Harris application.

On June 16, 1955, the Patent Department of Singer wrote a letter to Dr. Lando, which is Defendant's Exhibit 11. This letter was seeking information as to whether Singer could do anything with its Harris patent in Italy to beat Vigorelli. There were several problems involved in it. The first problem was whether, in Italy, there could be an amendment or reissue corresponding to the insertion of the claims in the Reissue patent application in the United States, and the second problem was whether, even if you could not do that, the patent could nevertheless stand up and beat Vigorelli.

[fol. 601] It shows first that Singer recognized that Vigorelli's Italian patent would be infringed by the Singer 319 machine which Singer was contemplating selling in Italy. This appears on page 1 where it refers to Vigorelli's ownership of Patent No. 497,557, claiming the broad idea of a zigzag type sewing machine having a plurality of rotary cams and means of selectively connecting any one of such cams to the needle bar so as to produce a predetermined pattern of zigzag stitching. Such a claim would apparently be infringed in Italy by the zigzag type machine which Singer was contemplating making.

It goes on to tell Dr. Lando that Singer acquired the Harris patent and that it would appear that Harris was the prior inventor of the common subject matter disclosed in the Italian Harris and Vigorelli patents. It said on page 3 that Singer attached vital importance to this, "thus we would appreciate receiving an opinion in connection with our questions at the earliest possible opportunity. If, in your opinion, we could take any effective steps to improve the value of the Italian Harris patent, we would appreciate your advising us accordingly, if possible, by cablegram."

It shows that Singer was endeavoring to find whether [fol. 602] there was any possibility that it could get a patent in Italy ahead of the Vigorelli and, if not, whether it could not claim prior invention of the subject matter common to the Italian Harris and the Italian Vigorelli patent.

* * * * * * *

[fol. 603] Mr. Pettit: Your Honor, this brings us to the point where Singer first thinks in terms of approaching Vigorelli. Before going into the first letter by Mr. Lightner on that, I would like to refer to Defendant's Exhibit 4, a letter of December 2, 1954, to Mr. Waterman from Mr. Stanford of the Patent Department, to show that not only was Singer worried but that it tried to do something about it.

It will be found from the stipulations, paragraphs 20 and 26, that it is stipulated that after discovery of the Vigorelli machine, in the letter of October 28, 1953, Singer was seeking all information possible to determine whether patents and patent applications would interfere with distribution of [fol. 604] Singer machines and that during the development of the 306, 319, 401 machines Singer made investigations to determine if it were free from a patent standpoint to market these machines in the various countries of the world.

In this letter of December 2nd the Patent Department calls attention to the situation, saying:

> "Recently in several foreign countries there have been published for opposition adversely-owned patent applications disclosing and claiming multiple-cam zigzag stitch sewing machines of the type adapted for family use. We feel that our competitors have on file many patent applications for multiple-cam machines and that the applications will soon be published in the major foreign countries. Indications show that at least some of these applications were filed one to two years prior to ours and, if granted, will interfere with our world-wide distribution of sewing machines of the type like the newly designed Perla (modified Class 306 W) and Johnson (Experimental Model 282) multiple-cam zigzag machines."

[fol. 605] It goes on to say:

> "However, we may be able to prevent the granting of many of these patents with broad claims through opposition proceedings, in the event that we can prove that the claims are anticipated by prior patents, publications, or machines."

It then suggests on page 2:

> "We believe that now is the time to begin to develop a defense, and that it would be highly desirable for us to acquire through our foreign friends copies of publications which disclose multiple-cam zigzag sewing machines. By publications we include all periodicals such as women's magazines and trade journals, as well as advertising brochures, in such publications which bear an early publication date and particularly those published prior to the year 1954."

Then at the bottom of the page it says:

> "In view of the above, we think it would be well if our foreign friends would furnish us, at the earliest opportunity, with all publications, instruction books and advertising material which discloses multiple-cam zigzag stitch sewing machines wherein various cams may [fol. 606] be selected for imparting different patterns of lateral zigzag movements to the needle. Obviously, a request for this information from your office would bring quicker results."

Whereupon Mr. Waterman's office wrote Defendant's Exhibit 6 dated December 20, 1954, and Defendant's Exhibit 7 with a similar date. The first of these letters was to Mr. Evans, the Italian representative, and the second of them was to Mr. Adamson, the German representative. In each instance, in the third paragraph, the letter states:

> "In view of the foregoing it would be highly desirable for us to acquire copies of publications which disclose multiple cam zigzag sewing machines. By publications we mean all periodicals such as women's magazines and trade journals as well as advertising brochures, instruction books and adjuster's manuals."

These, your Honor, are for the purpose of seeing if they could in any way limit patents in the field.

They received answers, the first being Defendant's Exhibit 8 from Mr. Adamson, a letter dated January 3, 1955, [fol. 607] and the second being Defendant's Exhibit 9, being

from Evans and dated January 12, 1955. In each instance it is seen by the letter they made rather exhaustive searches and found nothing that would be helpful, and nothing was ever turned up from that source. We will see that that same procedure is followed later on when we come to the Gegauf matter.

Now we are at the point where Singer is worried because it is thinking in terms of approaching Vigorelli to see if it could not clear the field for its machines. Mr. Lightner writes on August 16, 1955, to Mr. Evans, Defendant's Exhibit 12, and I will call your Honor's attention to the fact that Mr. Elkins made no reference whatever to this letter although he made reference to Mr. Lightner's letter written later, in September. Defendant's Exhibit 12 is dated August 16, 1955, signed by Mr. Lightner and addressed to Mr. Evans. He states:

> "In connection with the developments which we have underway in the matter of zigzag machines, we find that there probably is some conflict between patent rights which we have, or which we expect to obtain, and rather similar patents that are being obtained by Vigorelli."

[fol. 608] In the second paragraph it is said:

> "It is altogether probable that we may become involved in litigation with Vigorelli, not only in Italy but also in some other countries, unless by talking matters over with them we can find some basis of agreement which would enable us to be free from claims by them, and perhaps accord similar immunity to them with respect to claims by us based on our own patent rights."

There, your Honor, is a clear expression by Mr. Lightner of the type of agreement that he was looking for, an agreement that cross-licensed, opened the market to Vigorelli and opened the market to Singer wherever either of them had any patents that would affect the multiple-cam machines. He then goes on to show that we have no contact or connection with Vigorelli. He says:

> "The question is how to initiate such a discussion, and it is that which has caused me to write to you."

Then at the last page, which you will note is the very beginning of any negotiations, he states:

> "I do not know whether I can get Mr. Stanford to return to Italy just at this time for the purpose of tak- [fol. 609] ing part in such negotiations, but I do know that he feels that it is very important that we make progress without wasting too much time."

You will remember in connecton with this that in the very last document before the very last agreement, the assignment of Gegauf's patent application, the memorandum was drawn up for Mr. Stanford's benefit to take to Europe, and I point this out because, as the documents will show, Mr. Stanford was the key man in these negotiations from the beginning to the end and took part in practically all of them.

By letter of August 30, 1955, which is Defendant's Exhibit 13, Mr. Lightner received a reply from Mr. Evans. The most significant feature of this letter is that it shows that even the Italian representative had no contact wih Vigorelli. In the second paragraph it says:

> "Our relations with this competitor are friendly enough though our contacts are few and far between. Dr. Lando had some dealings with Mr. Vigorelli and his assistants during the war years, but has not had occasion to see much of them since, nor have my meetings and Mr. Baumann's during recent years been more [fol. 610] than occasional ones."

He goes on to say in the next to the last paragraph on that page:

> "However, should such an encounter be desired we would prefer the occasion to appear a fortuitous one, . . ."

and it ends: "Such a meeting would be arranged so as to allow Mr. Stanford time to get here."

That brings us to Government's Exhibit 4, Mr. Lightner's letter to Mr. Evans. This letter was read at length and constitutes practically the foundation of their whole case because they found a word in it they liked. They did not read the earlier Lightner letter because it might affect that word a

little bit. They made not too many comments on this letter, although they read it almost in full.

Mr. Elkins said that "the significance of this document is that it does, as we say, set forth the substance for the benefit of Mr. Evans of Singer Italy of the first approach that will be made to Vigorelli." I don't know whether it sets forth the first approach that will be made. It sets forth an approach that was suggested and it asked Mr. Evans' idea on it. In any event, the approach set forth was a possible [fol. 611] one, although the portion the government read and stressed was not set forth to Evans as an approach to be used. But it well may have been. I would like to read the beginning which says:

> "In my letter of August 16th I commented that it was probable that we might become involved in litigation with Vigorelli in Italy or elsewhere. For that reason it seemed to be desirable to try to talk matters over with them to find some basis of agreement."

In referring back to that letter in which he pointed out he wanted to find some basis of agreement, I think he was clearly referring to the basis of agreement that he had set forth in his earlier letter in August. He tells Mr. Evans on page 2:

> "Unless we are able to come to some agreement with Vigorelli, we will, of course, institute proceedings in Italy in due time seeking to invalidate such patents as Vigorelli has received, and we will do the same thing in France and in other countries in accordance with the proper procedure in each country. This litigation will undoubtedly result either in the cancelling of their patents and patent applications or, at any rate, severely [fol. 612] limit their claims."

Now, your Honor, whether that was an approach to be used, a forceful, threatening one, with Mr. Vigorelli, whether it was to be the approach that Mr. Evans was to use I don't know, but it is certainly one approach that could be used and with great justification. We, after all, had the Harris patent pending in Italy and it had an earlier date than Vigorelli's. We had the Harris patent pending in

France and it had an earlier date than Vigorelli's. We had the Johnson application pending in the United States that could cause Vigorelli difficulty in the sale of his multi-cam machine with a plurality of followers in the United States which he, of course, could use to interfere with us in other countries.

[fol. 613] There was also the fact stated that Vigorelli was infringing two other patents of ours—not material to this case, but he was infringing them.

Therefore, Singer was in a position to use a tough, hard-talking line of approach. It could have used another one in which it went to him and said, "We are helpless; you have beaten us. You think all your patents are good. Won't you please show mercy and give us a license?"

Now as kind and gentle a man as Mr. Vigorelli is, I do not believe that that would have been a very successful or impressive approach.

This is obviously an approach which is letting a man know that if we cannot get a cross-license we are going to fight him every place we can—the technique that is used by almost every negotiator that wants to get a license under a patent, and I daresay that if we had wanted to litigate all over the world, in the seventeen countries in which Mr. Vigorelli had patent applications pending, we could probably have established our superiority with the Harris patent in some of those countries.

Now Mr. Lightner goes on to say:

> "On the other hand, if we were to refrain from instituting such proceedings and if we were to withdraw [fol. 614] the Brazilian opposition, their applications might develop into rather broad patents which would have a dominating position in the industry. We ourselves hold some patents and have patent applications pending which would make trouble for Vigorelli if we were engaged in litigation with them, or which would greatly strengthen and broaden the patent situation if our position and their's could be pooled by some mutual agreement."

Now, your Honor, I think that a patent situation of two companies is strengthened by cross-licensing. When a company can now operate under its own license or licenses, and

also operate under the license or licenses of a competitor, it is quite clear that its patent situation has been broadened and strengthened.

It is perfectly apparent from the earlier part of the letter and the subsequent references in this letter that that usual arrangement is what he is talking about—and there is nothing left except the one word that "could be pooled by some mutual agreement."

Mr. Elkins, I think, admitted that there was no particular meaning to the word "pooled."

There is no technical meaning to the word "pooled." It [fol. 615] can be used in many senses by many people. I think it is a perfectly normal thing for a man to think that patents are pooled if you give your license on your patent to the other fellow, and he gives his license to you—and there is not the slightest indication in one single document, from beginning to end of this whole series, that indicates that Singer was ever interested in anything other than getting cross-licenses.

The Court: Were those cross-licenses that Singer sought to get from Vigorelli all pertaining to the multi-cam machine-carried sewing machines?

Mr. Pettit: Yes.

The Court: And no other?

Mr. Pettit: That's correct.

The Court: No other exchanges?

Mr. Pettit: No other exchanges.

The Court: It was not a general pooling of all patents?

Mr. Pettit: Oh, no, your Honor. The agreement is perfectly clear on it. It specifies the patents that are involved. It is broad in one sense and narrow in another.

Your Honor, I would like to give you, for your use or [fol. 616] to throw away, as you see fit, this, because I think it may be helpful.

Let me state what it is before you object to it. This is a tabulation——

The Court: They may not object to it. This is just given to me by way of a brief?

Mr. Pettit: Well, it isn't a brief; it is an aid to you in finding provisions in these three agreements.

The Court: You do not want to have it marked in evidence?

Mr. Pettit: No. I would like to tell you what it is.

The Court: Just give it to me.

Mr. Pettit: It is in parallel columns, extracts from the agreements themselves, so that if you are referring to Singer-Vigorelli or Singer-Gegauf or Singer-Messerschmitt, you may find the precise wording contained in the agreement—and it goes across, relating to the same subject matter.

The only thing that could be considered briefing at all is, oh, about ten words in the left extremity, the lefthand column, where we characterize what the provisions are—for instance, under License Provisions we put down what it is [fol. 617]—that may be deemed argumentative by Mr. Elkins (handing).

The Court: It is given as an aid to the court.

Give a copy to Mr. Elkins.

Mr. Pettit: Yes, sir.

The Court: Thank you very much.

Mr. Elkins: I understand, of course, that this is merely a chart and that it has no probative value and that it does not properly set forth the substance of the agreements here referred to. It does not.

Mr. Pettit: The agreements are in evidence.

The Court: It is submitted to me as a little memorandum or brief—that is all. It is not in evidence.

If I find that it is in accordance with the facts, I will accept it. It may save me some time. God knows you want me to do that, don't you?

Mr. Elkins: I beg your pardon, Judge?

The Court: I say——

Mr. Elkins: Yes, I would like to save you some time, Judge, but this does have inaccurate statements in it, and I do not think anything that presents an inaccuracy is really going to save your Honor any time.

The Court: You can point out later on in a little paper the inaccuracies.

[fol. 618] Mr. Pettit: Well, if there is an inaccuracy then somebody cannot compare it, because this has been compared word-for-word by people in the Singer organization. I do not know why it should not be correct.

The Court: All right.

Mr. Pettit: You will notice in the left column, "Singer-

Vigorelli license agreement" and it says that "Vigorelli will not bring any infringement action against Singer under the rights derived from patents now issued or to be issued in any country with respect to subject matter disclosed in U. S. patent No. 2,693,778 and in the U. S. patent applications by Johnson, Serial No. 471,766, and by Perla, Serial No. 386,684 and when embodied in sewing machines manufactured and sold by Singer, copies of which are at disposal for inspection by Vigorelli at the Office of Messrs. Barzano and Zanardo in Milan."

So that a license or a licensing of the making of machines under Singer's specified patents is shown here.

Vigorelli thereby agreed that no matter what patent he had, he would not enforce it with respect to the subject matter disclosed in the patent and the two applications mentioned, when that was embodied in sewing machines [fol. 619] manufactured and sold by Singer.

And the copies of the agreement, you will note, would be left with Vigorelli so that they could check whether we were going any place outside of this specific license granted.

> Singer in turn, it says "will not bring any infringement action against Vigorelli under the rights derived from patents now issued or to be issued in any country with respect to subject matter disclosed in Italian patent No. 497,557 and No. 507,862 and when embodied in sewing machines manufactured and sold by Vigorelli."

Which, your Honor, in substance says, "Go ahead and manufacture and sell your own machine, and as long as you are selling a machine that is embodied in your own plans and specifications and patents, we will not interfere with you; and you, Singer, will not interfere with us either with respect to the single-follower cam mechanism or with respect to the double-cam mechanism."

Vigorelli's two patents related to the two different types.

Now while we are in on this agreement, I will call attention to provisions about opposition and other provisions. [fol. 620] It is our contention, your Honor—and I think that it is very clear from the documents when you look at the Gegauf provisions, and you look at Mr. Stanford's

memorandum written at the same time—that these agreements all contained two different provisions. One of them relates to foreign countries in which opposition proceedings are available; the other looks to the United States where interference proceedings are available. And, quite naturally, actions in the one are quite different from actions in the other.

With respect to the foreign countries which have opposition proceedings, it provides:

> "Each of the two parties mutually agree not to institute any opposition, nullity or invalidation proceedings in any country against or otherwise to attack each others above-noted patents or patent applications and immediately to withdraw any such proceedings if it has already been instituted."

Now your Honor, you will remember that—and I may call a witness to prove this if necessary—in these foreign countries there are many proceedings available against patents.

[fol. 621] A patent can be obtained and exist for years, and anybody who feels aggrieved by it can go to court in a nullity proceeding and ask that it either be cut down or to declare that it should not interfere with the litigant's particular mechanism.

There is nothing that is final and conclusive in Italy, France, Brazil, or for that matter, in Germany or England. The provisions of the proceedings in the latter two vary to some extent, and the extent to which they can actually modify patents and reduce them is a little bit different in the former than in the other countries I mention.

You may know full well that in the United States when you attack a claim, it stands or falls in its entirety. You interpret it, but once the interpretation is made, the decision is, then: Is it valid or not valid?

If it is too broad, the whole claim falls.

That is not the situation in these other countries. These provisions were written with that in mind. They were intended to apply respectively to the actions in the different countries.

With respect to the United States, it says

> "provided, however, that if such two parties patents [fol. 622] and patent applications are or have become involved in a patent office priority-determining proceedings such as a United States interference or a Canadian conflict proceeding, then both parties will work together in order to settle such a proceeding in accordance with the laws and regulations of the patent office concerned and in the spirit of this agreement."

Now the Gegauf agreement, which I will come to later, even sets this forth more clearly than these other two do. There is a clear provision that interference proceedings shall be conducted "in accordance with the laws and regulations of the Patent Office concerned."

Mr. Weinstein has complained that in interference proceedings in the United States, the party has a right to challenge the claim that has been suggested for interference, to be limited, and ask that it be held non-patentable or invalid. That is correct. That happens to be provided, however, by the very rules and laws and regulations referred to in this contract. It is in accordance with those very laws and regulations that Singer and the contracting party are to proceed in an interference proceeding.

[fol. 623] There is not a line there that would keep Singer from objecting to a claim or seeking that it be limited—and there is every reason in the world why it would not want it to be so limited, because the last thing that Singer would want is a patent which is invalid. Its foes, when it has them, have strength enough to present contentions of invalidity.

This clause was put in here for the very purpose of making sure that every right under our law was reserved to the Singer Company.

Now whether it cared, whether it thought there was anything wrong and later made no objection, is beside the point.

Mr. Weinstein's argument is that the very restraint itself is illegal—and I say there was no such restraint. The application that he wanted us to be free to attack, the interference proposal, was one that the Singer patent department itself had drawn up, and obviously believed was proper or it would not put it in there.

There is not much surprise that Singer did not interpose an objection to the very claim it had drawn—and the claim in fact that it had drawn was considered so good that it was the claim picked in toto—every word, every period, every [fol. 624] comma—by the patent examiner to suggest for interference, covering the same subject matter in Gegauf and in Harris.

It is the same claim that the examiner was referring to when he also sent notices to Vigorelli and to Johnson, both of whom had gone out of the contest.

In Mr. Lightner's letter he continuously refers to some "mutual agreement"—some kind of agreement.

There is not a page in here where it refers back to any particular agreement. It just says—the whole spirit of this—that he was not looking for a particular—he was not suggesting something except that he wanted some kind of an agreement, and the one that he suggested before, and that he obviously had in mind, was the cross-licensing agreement that would let each operate in his respective field.

Government's Exhibit 5, a letter dated September 9, 1955, from the Patent Department, I presume, to Mr. Lightner, shows the matter with respect to which I spoke a minute ago—that Singer was opposing the patent application to the multi-cam arrangement filed by Brutsch & Company, and in fact it was all of the material used in that opposition that was enclosed in Mr. Lightner's letter—an opposition which [fol. 625] I might say, if I learned had been filed in the face of an offer by Brutsch to give us a license if we would just agree not to attack him—I would, at a minimum, raise an eyebrow as to what had happened in our patent department.

Government's Exhibit 8, a letter dated October 10, 1955 from Mr. Evans to Mr. Waterman, is only significant because it is the very first notice that Singer had of the possible existence of the Gegauf patents.

It gives no idea what they claimed or what they were about nor their contents. They just gave notice of the possibility in this October letter. It says:

> "It appears that the Bernina Company deposited a patent for a device involving a plurality of cams in a small number of countries."

Now what the patent said or what it did, Singer did not know.

I do not know whether there is some intimation from the government that upon learning of the possibility that Gegauf might be in this field, that we should have stopped the negotiations with Vigorelli. It seemed to me to be the implication. If so, I can only say it is incomprehensible. I know [fol. 626] of no reason why. Whatever we found out about Gegauf we should not have continued our negotiations with Vigorelli and closed the cross-licensing agreement which we wanted with them in order to free our machines from whatever patents he might have, regardless of whatever Gegauf might have.

Defendant's Exhibit 14, which is a cablegram to Mr. Waterman from Singer in Italy, shows the first knowledge that Singer obtained of Gegauf's filing date in Switzerland. It still had no knowledge of the contents of the claim.

Defendant's Exhibit 15 is significant only because it indicates to Singer that Vigorelli had filed an application in the United States. We had been working at this time without definite knowledge as to where they might have filed them, but only with knowledge that they would be ahead of us in the various foreign countries.

Then on the last page comes the first intimation of the places that Vigorelli had filed, which is "Italy, Spain, Argentine and other minor territories. It has been applied for but not yet granted in U. S. A., U. K., France, Brazil, etc."—and the "etc." covers additional filings by Vigorelli.

[fol. 627] Defendant's Exhibits 16, 17 and 18 continue to show no knowledge of the contents of the Gegauf claim. 16 shows that Singer had no knowledge of the Gegauf Italian patent claims, and that it was still making efforts to ascertain the nature of such claims.

Defendant's Exhibit 17, a letter from Evans to Waterman, dated October 24, 1955, shows that Singer at that time —or at least at the time this letter was received—received an Italian copy of the Gegauf patent. It shows that Singer had no idea of the Gegauf claims and the efforts made by Singer to obtain a copy of the Italian patent and the copy of such a patent in Italian was mailed in Italy on the date of this letter.

Defendant's Exhibit 18, dated October 25, 1955, a tele-

gram from the Patent Department to Snider—this again is to show Singer's efforts to obtain any information concerning any Gegauf application or patents in the United States.

Up to this time Singer had, for some reason or other, seemed not to be much worried about Gegauf in the United States, but it received back a cable sometime later—I believe in December.

Now in the meantime, on October 25th, it commenced another series of searches to see if there was anything that [fol. 628] it could learn that would enable it to break or void or invalidate any of these patents—this one instigated obviously by the continuing news of Gegauf.

On October 25, 1955, a letter was written to Mr. McKinnon, Singer's representative in Japan. This letter states:

> "We would like to invalidate several adversely-owned European patents each relating to zigzag stitch sewing machines and broadly claiming the idea of providing such a machine with a plurality of differently shaped rotary cams and means for selectivel connecting any one of the cams with the needle-bar, thereby to produce any one of a plurality of different patterns of ornamental stitches. These patents could be invalidated, or at least severely limited in scope, if we could locate one or more printed disclosures illustrating and describing such a machine, which disclosures were published in any country prior to May 31, 1952."

You will note, your Honor, that at this time it was the date "prior to May 31, 1952" which they by this time knew [fol. 629] was the filing date of the Gegauf patent in Switzerland.

A year before you will remember the date had been 1954, when they were thinking of Vigorelli.

This search obviously was started as a result of the news it now had as a result of Gegauf, although it really knew nothing except that there was an application relating to a multi-cam machine, and it had a date of May 31, 1952.

On page 2 of this letter, starting at the bottom of page 1, it says:

> "With the exception of Japanese patent application No. 13343 of 1953, you will note that each of these appli-

cations was filed in Japan prior to the critical date of May 31, 1952. However, none of these ten applications (which I may say parenthetically were referred to on page 1) was published until after this critical date. Thus, it would appear that these applications in and of themselves would not assist us in invalidating the subject European patents. However, it occurs to us that possibly the subject matter of one of these ten patent applications might have been given publicity in Japan [fol. 630] prior to the critical date of May 31, 1952. In other words, one of these Japanese machines may have been illustrated and described, prior to May 31, 1952, in Japan in a newspaper, trade publication, or advertising brochure, which publication would assist us materially in invalidating the subject European patents."

It goes on to say:

"However, since Singer wishes to manufacture and market machines of the type claimed in the subject European patents, you will realize the importance to us of being able to invalidate or severely limit the claims of these adversely-owned patents."

On page 3 it says:

"Even though such machines may have never been produced in quantity in Japan, it may be possible that one or two of such machines were made up and demonstrated at an industrial fair or at one of the Japanese universities. Such an exhibit might well have been covered by the newspapers and, furthermore, the machine may have been illustrated in printed brochures."

[fol. 631] Now, your Honor, we have a lot on this Japanese situation—and I am not going to try to read all of these letters from Mr. McKinnon to Mr. Stanford. I will say that a look at them or a reading of them will show that he did everything humanly possible to find any form of publication in Japan that would help invalidate this Gegauf application or any other application like it.

I might refer to Exhibit 22. He says:

> "No catalogs or specifications are available from MITI on San Shin zigzag machines produced prior to May 31, 1952."

Under No. 5, he says:

> "We are now searching through as many Japanese sewing machine publications as we can find dated prior to or around May 1952 to see if we can gain some information from them."

Under No. 6:

> "We are now checking at the Industrial Research Bureau of MITI to learn if they have any information or sample zigzag equipment."

Your Honor, he went to prior inventors; he went to prior examiners in the patent office in Japan, and he searched high and low.

[fol. 632] At the end, he indicated, in Defendant's Exhibit 24, where Mr. McKinnon was written:

> "From your letter it appears to be rather conclusive that no multi-cam ornamental zigzag stitch sewing machines were publicly introduced in the Japanese market prior to May 1952."

Again, below:

> "In any event, the information which you have developed for us to date has been most helpful, and we wish to thank you for your efforts on our behalf for we appreciate the amount of time and trouble that this investigation caused you."

It was revised only temporarily, and finally it was concluded with the advice that they were satisfied that nothing further could be done.

That is not the mark of someone who is seeking solely in terms of acquiring monopolistic position through patents; all that we have read so far shows Singer working and striving as a manufacturer of sewing machines—working to the

end that it could sell those machines and practically ready to give anyone a license to sell under Singer's patents if Singer obtained a corresponding right under interfering and con-
[fol. 633] flicting patents or even applications, whether or not we could establish by judicial proceeding the complete validity of each and every part of every claim of every patent.

Government's Exhibit 10 is a letter which I think it failed to comment on before. It commented on 10, on the writing on the back of it, but the letter itself has some significance when you get to the Gegauf situation—and they did not read that.

Mr. Wiegand, the German patent attorney, writes to confirm "the conference with Mr. Stanford and Mr. Kruger, on the 7th inst. I beg to report that I have discussed the matter in detail with the competent examiner for Class 52a" —which, by the way, is sewing machines.

> "In doing so it was found that the examiner did not know any better material than that known to us.
>
> "The Examiner was extremely pleased to get knowledge of the American patent No. 88,282. He also took a note of the Brtish patent 19 184 /1908 and the copy of the German patent 219187 which I submitted. The latter two patent copies were already known to the Examiner somehow."

[fol. 634] Now the Government might have been interested in whether the patents disclosed to the examiner by Mr. Wiegand included the Van Tuyl patent. They have never made any inquiries.

On the back of this letter there is a hand-written note by Mr. Stanford to Mr. Williams of Singer's patent department. This note says:

> "Vigorelli claims or states that Bernina has filed an application in the United States corresponding to their early-filed Italian patent. If this be so, maybe Harris Reissue should not be pushed too fast. Something to think about.

You will find later on why they did not want to push too fast. They wanted to deal with Gegauf, with knowledge in their possession which Gegauf would not have if our patents were not pushed too fast.

[fol. 635] The last paragraph reads, and this, too, is not noted by Mr. Elkins:

> "Fairweather tells me our British opposition against Vigorelli would have failed. Am glad we have agreement."

Fairweather, your Honor, is a partner in the firm of Singer's patent attorneys in England and Scotland. He said that the opposition in Britain, where Mr. Weinstein and Mr. Elkins think we acted so badly towards the British citizens when we did not engage in the opposition, would have failed.

Your Honor, that brings us to the agreement which we have already discussed. I will pass that one by and take up the correspondence immediately following.

Defendant's Exhibit 20, dated November 19, 1955, is a note to Mr. Vigorelli and says:

> "This is to inform you that, following the agreement signed on November 17th between the parties, we have today deposited in the offices of Messrs. Barzano & Zanardo, our patent agents, copies of the patent applications by Johnson and by Perla."

That was just a little touch showing the great conspira-[fol. 636] torial attitude that was held by us. That was, of course, so that Vigorelli could keep check on whether we were operating under his license and not in a way other than that specifically provided for.

On December 28, 1955, a letter was written to the Patent Department by Mr. Adamson. Mr. Elkins referred to this letter rather coyly. He just characterized it as dealing with one phase of the agreement. The letter does not say anything about being one phase. This letter sets forth what the Singer Patent Department thinks Singer has agreed to. It says:

> "As you know, on November 17, 1955, Singer and Vigorelli executed an agreement relating to multiple-cam ornamental stitch sewing machine. Briefly stated, under the terms of this agreement, Singer agreed not to bring any infringement action against Vigorelli in any country of the world with respect to Vigorelli-made zigzag stitch sewing machines of the type particularly

disclosed in the Vigorelli Italian patents No. 497,557 and 507,862. For its part, Vigorelli agreed not to bring any infringement actions in any country of the world [fol. 637] against Singer with respect to the Singer Class 282 and Class 319 machines as disclosed in the several Singer-owned patents and patent applications relating to these machines."

That is its description of the agreement it entered into, that is its concept of the substance of that agreement, and, your Honor, that, of course, is the agreement that was made and is the only significance of any part of the agreement that was made. Clauses which merely say "I won't attack or try to limit or fight your patent" are the most routine clauses to be put in patent license agreements. In fact, in this country I think it is pretty well established that without any agreement a licensee is foreclosed from challenging the patent so long as he is operating under the license.

The Court: I think you are a little in error there, Mr. Pettit, on the law when you made the comment that a licensee may not——

Mr. Pettit: Even without an agreement is not estopped? I submit to your Honor, I had thought that a licensee was not privileged to attack the patent he is operating under as long as he accepted and used the license.

[fol. 638] Government's Exhibit 14 dated December 23, 1955, shows the withdrawal of opposition in Brazil.

The Court: He, himself, cannot attack it because he could only attack its validity in a declaratory judgment suit, and there would be no dispute pending while he operated under his license.

Mr. Pettit: That is what I meant. While he is operating under the license he cannot turn around. If he gives up the license, he can do it.

The Court: That's right.

Mr. Pettit: But so long as he is operating under the license, he cannot.

The Court: There would be no dispute, no basis for a declaratory judgment suit. There would be no actual controversy. All right.

Mr. Pettit: He might try to create a controversy, but my

point is that he cannot do both. He cannot use his agreement and attack it at the same time.

The Court: Cannot do both, no, sir. You are right.

Mr. Pettit: Mr. Elkins refers to this, saying that it is an effectuation of the agreement not to oppose, and he recalls that the patent application was filed on very broad claims. My only comment is: so we said with respect to Brutsch.

[fol. 639] On December 10th Singer Italy wrote a letter to Mr. Waterman. This is Government's Exhibit 15. Mr. Elkins, as a result of questioning by the Court, admitted that there was no conspiracy at this stage. Yet at this time we already have an agreement with Vigorelli containing exactly the same type of clause that was later put in the Gegauf agreement. We made the agreement that he claims actually constitutes the heart of the conspiracy when we get to Gegauf. Certainly there was nothing conspiratorial when Vigorelli negotiated with Gegauf to get an agreement and when, in that negotiation, he brought great force on him, threatening him with patents, disclosing that he has many more applications than Gegauf, many other matters that he brought up in getting this license without cost. Yet he never once mentioned to him his agreement with Singer.

Obviously he couldn't be making an agreement with the knowledge of Gegauf for the purpose of forming this round robin that the government talks so much about if he never even mentioned Singer or mentioned its agreement, and I think it is perfectly clear that he did not.

[fol. 640] So we have at this time both the Singer-Vigorelli agreement, the Gegauf-Vigorelli agreement, Singer's clauses that are so much objected to, and not one single element of conspiracy, no mention in one single document of the Japanese, no mention in one single document of the possible purchase of the patent.

* * * * * * *

[fol. 641] Afternoon Session

Mr. Pettit: Your Honor, beginning with the Singer-Gegauf license agreement, I would like to have before you the chart which was shown in the pre-conference hearings,

showing the identity of Claim 1 of the Gegauf patent as it was ultimately issued and that of Claim 22 that was in the Harris Reissue application, put there by the Singer patent department.

Claim 22 happens to be the one that was ultimately allowed to Gegauf upon Gegauf's—well, really, upon the withdrawal of Singer, because Gegauf had the priority date when these claims were placed in interference.

I think the Government has a copy of it (handing to the Court).

I have given this to you because in coming to the agreement, you will find that the Harris agreement relates, so far as Singer is concerned——

The Court: May I ask a question?

We have the Gegauf patent in evidence. Have we the Harris application in evidence today?

Mr. Weinstein: Yes.

The Court: All right.

Mr. Weinstein: Harris Reissue.

[fol. 642] The Court: This is submitted as an aid to the court.

Mr. Pettit: As an aid to the court.

The Court: It is not an exhibit.

Mr. Pettit: You will see that every single element is just the same there—the same claim that was taken from 22 by the examiner and suggested in the interference—they are just identical.

The Court: Just two seconds, if you don't mind.

Well, it is almost identical wording.

Mr. Pettit: It is bound to be because it is the claim that was inserted in the Harris Reissue application by Singer, so it was Singer's claim. The examiner thought that was the best expression of the claim, on the common subject matter involved in Gegauf 1 and in Harris.

The Court: Did Singer copy this from the claim of the Gegauf patent?

Mr. Pettit: Just the reverse. Singer had the Harris Reissue patent and ultimately put this claim in the Harris Reissue application. That is the way it stood at the time the patent examiner suggested an interference—at least it is the second suggestion of interference. Mr. Weinstein com-

[fol. 643] mented that there had been an earlier claim 19 which the examiner suggested; he then withdrew this claim and it was inserted in the Harris Reissue application as an amendment, and this was taken by the examiner and used to suggest a claim to Gegauf, and Gegauf accepted that claim, and that from that moment on the interference involved that claim as a statement covering the common subject matter of the two applications.

[fol. 644] The Court: I see. All right.

Mr. Pettit: And when the claim was awarded to the Gegauf application, because of Gegauf's earlier priority date and because of Singer's withdrawal because of that, that, of course, came out of the Harris patent; it could no longer go in there, and all that was left in the Harris application to go into the Harris patent were the items that are set forth in item 29, page 16 of the statement of facts.

The Court: All right.

Mr. Pettit: And you will find on page 16, item 29, what is the Harris patent today. It is those three items.

The Court: 5, 6 and 7. I have them.

Mr. Pettit: Yes. They are set forth in substance in (a), (b) and (c) on page 16.

The Court: All right.

Mr. Pettit: So, when you are thinking of the Harris patent as it exists today, you think of these three claims.

The Court: All right.

Mr. Pettit: And these three claims are tied to the use of these mechanisms set forth in (a), (b) and (c) with the Gegauf No. 1 mechanism. I mean that is a very important [fol. 645] factor in this case, that there is no such thing as a violation of any one of these claims unless the machine using it also incorporates the Gegauf No. 1 claim disclosure.

The Court: All right.

Mr. Pettit: In other words, there cannot be a violation of (a), (b) or (c) alone. I mean, it isn't a question of construction or anything else. The patent calls for the use of this in conjunction with the 401 type of mechanism.

On January 19, 1956, a letter was written to Mr. Waterman by Mr. Stanford. This is Government's Exhibit 16.

The Court: Yes, I have it.

Mr. Pettit: Singer at this point became alarmed for the first time about the Gegauf situation in the United States. It

had been alarmed, as the letters that I read this morning show, and they had sought means of destroying any patent that might exist with respect to the following situation, but I think that a reading of these letters in sequence, although not just clearly set forth here, will lead to the conclusion that Singer for some reason or other really did not believe it was likely that Gegauf had an application filed in the [fol. 646] United States. It had warning. I don't contend that there was any justification for that. I say merely that it does come out of these documents that Singer was a little bit unaware of the danger in its home ground.

When this letter was written, it had just previously found that there had been an assignment in the Patent Office which indicated that Bernina had an application pending. He writes:

> "In view of the discussions in Italy and Germany, it was decided that Bernina's German utility model and Italian patent did not validly block Singer from manufacturing and selling the Class 319 machines in Germany and Italy. However, the Swiss Bernina patent application and possibly the corresponding German patent application may mature into patents containing claims which would be infringed respectively in Switzerland and Germany by our Class 319 and Class 282 machines.
>
> "Several weeks ago the U.S. Patent Office unofficially advised us that the claims of our U.S. Harris Reissue patent application are allowable over the known issued patents. These claims, if allowed, would read on both the Singer and Bernina machines. It follows that [fol. 647] such claims if contained in a Bernina U.S. patent application would also be allowable over the known issued patents."

The next paragraph continues:

> "We have been continually investigating the records of the U.S. Patent Office to locate any evidence that would indicate that Bernina has filed a patent application corresponding to its original Swiss application of May 31, 1952, and until last week had found nothing to

indicate that such an application had been filed. We now find that a Bernina patent asignment was recently recorded in the U.S. Patent Office and, as this assignment referred to an application executed on May 20, 1953, it could relate to a patent application corresponding to the above noted Bernina Swiss patent application. Unfortunately for us, the parent Swiss Berninia application was filed in Switzerland some nine days prior to the effective filing date in the United States of our Harris reissue application No. 516,058. From this, it is reasonable to presume that if this U.S. Bernina application in fact corresponds to the parent Swiss case, the [fol. 648] U.S. Patent Office will declare an interference between this application and our recently filed U.S. Harris reissue application No. 516,058 for the purpose of determining which of the two parties is entitled to the broad claim. Since any such U.S. Bernina application would be entitled to its corresponding Swiss priority date of May 31, 1952, which is nine days prior to the effective U.S. filing date of June 9, 1952 of the Harris reissue patent application, it would appear that Bernina might be entitled to the broad claims."

It then goes on to point out that an interference proceeding is a long, complicated affair that furnishes each party with an opportunity to attempt to block the ultimate allowance. It says:

"The outcome of such an interference cannot be predicted with certainty. In other words, assuming that Bernina has filed such an application in the United States, then our Harris reissue application is of value to us as a means for opposing the final allowance to Bernina of broad U.S. claims covering multiple-cam ornamental machines."

Then it says:

"If Bernina has filed such an application, we would [fol. 649] presume that the U.S. Patent Office would set up an interference with our Harris reissue application within the next four to eight weeks since, as above

stated, the Patent Office has already unofficially advised us that the claims in our Harris application are allowable over any known issued patents."

Your Honor, I want to call attention to the fact that they were contemplating an interference in four to eight weeks. It goes ahead:

"In view of this situation, we would strongly recommend that this Company attempt to work out with Bernina an agreement along the lines of the Vigorelli-Singer agreement. Our chances of negotiating such an agreement with Bernina would be greatly enhanced if we could approach them before any patent interference is declared. At the present time, we feel that we have more knowledge concerning this entire situation than does Bernina. Thus, up until the time that such an interference is declared Singer would be in the better bargaining position with Bernina, for after declaration of the interference Bernina would, as a matter of course, be given access by the Patent Office to our Harris re- [fol. 650] issue patent application and then would know that its application has an effective filing date nine days earlier than our Harris application."

And so, your Honor, here was a definite outline of the haste to approach Bernina and deal with them at a time when Singer knew that Bernina was ahead by nine days but Bernina could not know it because Bernina wouldn't know whether there had been a disclosure in the United States before the filing date of the Harris patent. It continues:

"... we are not as concerned over the other parties, as it is possible that Harris is senior to these parties. As for Bernina, we know that Bernina is the senior party by nine days."

Then it summarizes. It says:

"The present patent situation relative to multiple-cam machines is complicated due to that fact that shortly after World War II many sewing machine concerns developed various forms of this type of machine and then filed at substantially the same time patent appli-

cations directed to cover their various developments. Some of these applications were filed as early as 1952. In many of the principal manufacturing countries there [fol. 651] will be patent conflicts to determine which parties are entitled to the broadest patent protection."

And then finally it says:

"However, we hope to avoid the necessity of asking for such licenses and paying tribute under such patents by negotiating agreements with any such potential patent owners before the world-wide patent picture clears relative to multiple-cam machines. This we have already done with Vigorelli, and we suggest that the same approach be used with Bernina and any other party which appears as a potential owner of a dominating patent.

We believe that our position would be enhanced if we could negotiate an agreement of the Singer-Vigorelli type with Bernina. Presumably, the earlier we approach Bernina concerning this matter the greater would be our chances of success."

Now there is a document that shows an approach—and Mr. Elkins was looking for an approach—and that was to bargain with Bernina at a time when we had information that Bernina did not have, and would thus have that advantage over us in the negotiations to take place. [fol. 652] February 6, 1956, a letter was written to Mr. Baumann—this is Government's Exhibit 17. The government read portions at the bottom of page 1, and there appears the following sentence:

"It seems that during Dr. Lando's conversation with Mr. Vigorelli mention was made of the agreement Vigorelli has concluded with Bernina. This is stated to be along the same lines as that concluded between ourselves and Vigorelli last November."

Now as this is the beginning, I think, of the government's alleged conspiratorial charge, I would like to note particu-

larly what it is we are trying to get out of Vigorelli. This says:

> "We are very much interested to learn of the Bernina-Vigorelli agreement, as confidentially there is the possibility that we will want to meet at some time in the near future with Bernina representatives and discuss similar arrangements. I think, if Dr. Lando could use the excuse of passing on to Mr. Vigorelli the foregoing information concerning the Singer patent, about which he has inquired, as a reason to again visit Pavia and have an informal talk with him, at which time the information I have just given concerning the patent [fol. 653] could be passed on to him, there would be a good opportunity to very informally chat about the Bernina agreement."

The letter goes on to show that Singer wanted for its use to extract from Vigorelli information. It says:

> "We would very much like to know, of course, any further particulars that Mr. Vigorelli might pass out on such an occasion about the agreement with Bernina. We would like to know just how it came about that, after Bernina having pressed as they did for the sum of $160,000 (this figure was mentioned during the course of our visit last November), the ultimate settlement was for no monetary consideration but only on the basis of neither party interfering with the other with respect probably to certain specific patents. We would like to know details of the particular patents that Vigorelli had come across which caused Bernina to drop its demands for the large amount for settlement; the numbers, if possible; and, of course, the inventor and the country in which the patent or patents were taken out."

Now your Honor, that is no conspiratorial approach. [fol. 654] That is an approach by which our man is to go casually, engage in conversation with Vigorelli, get from him all the information they could for Singer's use in dealing with Gegauf.

Government's Exhibit 18 is a letter to Mr. Baumann, dated February 21, 1956.

This says:

> "The whole idea of going directly to Switzerland is predicated upon two factors. First, that we will have arrived in our minds at a logical and plausible reason, and sufficiently interesting too from the standpoint of the Bernina people, to visit them, and second, that we have been able to establish our contacts with the proper persons and to arrange for a meeting at the desired time."

Here again, your Honor, is an indication that Singer did not think the approach of just going in and saying, "You have us beaten by nine days. Will you be kind and gentle and give us a license?"

They wanted to figure out some basis on which they could offer something or use something that would be an inducement for him or a force for him to enter into an agreement with Singer.

> [fol. 655] "We can only make a decision upon the first premise when we hear from you and learn the results of your conversations with Mr. Vigorelli and, perhaps, have answers to some or all of the questions that we posed in our letter to you previously."

Defendant's Exhibit 27, a letter dated March 1, 1956, to Singer's representative, Winteler in Geneva, Switzerland; it is written for the purpose of seeing if arrangements could be made to meet with the Gegauf people. It says:

> "The present plan, as far as I can definitely determine, is to arrive in Genoa on April 9th and to stay over that night in Genoa and proceed at once on the morning of April 10th to Zurich."

Later it says:

> "As mentioned previously, there is the possibility that we will be wishing to talk with the top management of the Bernina Company, and we are interested to learn if you are acquainted with the persons who are in the responsible management positions. If so, we would appreciate learning their names, and if you have had any

dealings with them to learn what you may know about [fol. 656] them. Under no circumstances, however, do we wish you to pass any word to any persons in that company that we do have any intention of speaking with them about any matter, nor of speaking to any other persons who might appraise them of the possibility of meeting with them that I have mentioned.

So here was an indication, of course, that Singer had no acquaintanceship with the Bernina people, and as in the case of Vigorelli, had to seek out the people who could find the top personnel and make an approach to them. And we advised them not to advise anybody who might pass on the information—and that includes Vigorelli—and you will find the express purpose not to tell Vigorelli in a later letter.

Government's Exhibit 19, a letter of March 3, 1956, to Mr. Waterman from Singer, Italy. It encloses a report by Dr. Lando, who is giving a reply to Singer's request for information.

It says:

"With reference to the contents of Mr. M. L. Waterman's letter of February 6, 1956, I had a meeting with Mr. Vigorelli in Pavia on February 29th and I am setting out below a summary of the information during the [fol. 657] course of a long and friendly conversation."

Before I mention the information that he did succeed in getting, your Honor, I want to call attention to the final paragraph in this report, on page 3:

"I repeated what I had already mentioned at the start of the conversation namely that we were interested in discovering how Vigorelli had managed to reach an agreement with Bernina without the compensation originally requested.

Mr. Vigorelli's reply was interesting 'I was under the impression that Singer was collecting information for opposing the Gegauf-Bernina patent in U.S. and prevent the sale of their machine there'. On my expressing some doubt as to the correctness of his interpretation Mr. Vigorelli was unable to hide some disappointment."

Now that shows how much he knew about how the information was going to be used that was being extracted from him.

The information that was obtained—well, there was three difficulties with Gegauf's situation with Vigorelli.

One was that his patents might be too generic in their terms—the main feature being described in the patent [fol. 658] among the minor details—in fact, as one of the possible variations.

Another weakness that must have impressed him considerably was that while Bernina had filed in four countries, Vigorelli had filed in 17.

And the third one was an exhibition by Vigorelli of various patents which he waived in front of Gegauf, to tell him that his patent claims in the various countries might have some weaknesses in them.

Now all that information was obtained without Vigorelli even knowing why we were wanting them or how we were relying on them. That, your Honor, is not much of a conspiracy.

Defendant's Exhibit 28, a letter dated March 8, 1956, from Mr. Waterman to the Patent Department. This shows Mr. Stanford's idea as to how Waterman should write to Mr. Winteler—but you will remember that Mr. Winteler had already been written the letter that I read a few minutes ago—but this does show Mr. Stanford's thoughts on the matter that he passed on to Mr. Waterman, that he thought he write to Mr. Winteler.

"We feel", reading from the beginning of the second paragraph—

> "that Mr. M. C. Lightner's letter of August 16, 1955, [fol. 659] to Mr. W. P. Evans in relation to the Singer Vigorelli matter was especially good and we have altered Mr. Lightner's letter so as to make it appropriate in connection with the present Singer-Gegauf matter."

Your Honor may remember that the letter of August 16th was the one in which Mr. Lightner made crystal clear his concept of the type of agreement that Singer was searching

for—a cross-licensing agreement under which they each opened their territories to the other, for or under the patents involved.

He ends up:

> "In other words, it would appear to us that it would be advisable to handle the present Gegauf situation in substantially the same manner as the Singer-Vigorelli affair"—"in substantially the same manner as the Singer Vigorelli affair" which,

according to the government, had no element of conspiracy or unlawfulness in it.

Defendant's Exhibit 29 is a letter dated March 9, 1956, to Mr. Baumann, Italian Singer representative. This letter is quite significant in showing the relationship between Singer and Vigorelli. It says:

> [fol. 660] "Your letter of March 3rd, with the report of Dr. Lando's visit to Pavia, was greatly appreciated. There is no change at the moment in our plans to proceed directly to Switzerland from Genoa. We are undertaking to have the proper arrangements made in Switzerland so that we can meet with the proper persons of the Bernina Company, although this information should not be passed along to Mr. Vigorelli or any others other than yourself and Dr. Lando.".

Defendant's Exhibit 30, a cable dated April 13, 1956, says:

> "Yesterdays Steckborn Conference"——

referring, of course, to the conference with Gegauf, as this was the day before the execution of the cross-license agreement——

> "Not as Straight Forward as at Pavia Last Fall Due Quite Obviously to a Feeling of Assurance Their Situation Is the Superior One Also Suspicious Our Intentions This Feeling Apparently Became Dissipated by End of Our Sevenandhalf Hour Meeting Stop Next Conference Tomorrow Saturday Afternoon".

Your Honor, how could a conspiracy have existed at the [fol. 661] time, when the agreement was signed the following day? Up to that point there is not a single reference to a Japanese or a Japanese machine—and they meet the next day and sign the agreement, an agreement which, according to Singer, stated over and over again was a repetition of the Singer-Vigorelli agreement. That agreement was signed the next day.

If your Honor will look at the chart of the license agreements, you will find set up in the center column the provisions of this agreement that are relevant here.

So far as the license provisions are concerned, Gegauf

> "undertakes not to attack Singer, either directly or indirectly, in any country:
> on the basis of any of its above mentioned patents or patent applications"

Now Gegauf's "above mentioned patents or patent applications" consisted of the Swiss patent, the original Gegauf patent that had a filing date of the 31st of May, 1952, Gegauf's Italian patent, a German Gebrauchsmust registration, which I understand is in the nature of a petit patent that expires in a short time, its U.S.A. application No. 358,- [fol. 662] 377, and a German patent application No. G11,654.

So it says that Gegauf undertakes

> "not to attack Singer, either directly or indirectly, in any country, on the basis of any of its above mentioned patents".
>
> "Singer, on the other hand, undertakes not to attack Gegauf either directly or indirectly in any country, on the basis of any of its above mentioned patents or patent applications, and
>
> (b) for the present construction of the Bernina sewing machine as shown on the photograph attached to the present agreement and signed on the back by both parties."

So, in other words, Singer granted to Gegauf a concession that it would not attack Gegauf, under specific patents, namely, the Harris patent and its foreign corresponding

patents—and not another patent was mentioned; this relates to the Harris patent and the Harris patent only.

Gegauf got one further concession. You will notice this concession is only with respect to the Harris patent. He got one further concession, that with respect to the present construction of his machine, which was set forth in drawings [fol. 663] annexed to license agreement, he would not be attacked in any way. In other words, he was saying "I don't care what patents you have. The machine I am making and selling I want you to agree that you will not interfere with" —and other than that he got his license under the Harris patent application.

Now Singer also undertakes "not to manufacture or sell a construction which would be a slavish copy either of the present construction of the Bernina sewing machine—taken as a whole—which is shown on the attached photograph, or of the feeler and multiple cams mechanism the said Bernina construction includes."

Now Mr. Weinstein just mentioned that purely per se it violates, I gather, the whole agreement—I mean vitiates the whole agreement and is a most amazing suggestion. The Singer mechanism is shown by this Exhibit 106-B.

The Bernina mechanism is shown in this Exhibit 107.

You will see that while Singer gets a perfect right to use multiple cams with a single follower, all of the features, it can go into competition with it in every respect, it is limited that they won't make a slavish copy of this particular form [fol. 664] of mechanism—and to say that "Although you can use the principle, you can use the whole idea, you can go into competition with it freely, it is void because you cannot copy it detail for detail."

Singer quite obviously did not have much interest in doing it anyway.

I do not see how anybody who had this mechanism would be particularly interested in abandoning and using Bernina, but since Bernina was very proud of it, he thought it was a wonderful machine and Singer said "We will not make a slavish copy of this mechanism."

Then we come to the interferences. This is more clearly —even than the other agreements—provided in two separate portions.

[fol. 665] If you refer to the agreement itself, you would

see that there are two paragraphs appearing under a single number. The first paragraph obviously refers to opposition proceedings in these countries where you have a system of either opposition or the ability to bring nullity proceedings. It says:

> "Singer and Gegauf each undertakes not to do anything either directly or indirectly and in any country, the result of which might restrict the scope of the claims of the other party relating to the subject matter of the above-mentioned patents and patent applications."

When they are talking about restricting the scope, there is a regular procedure practically all over Europe for restricting the scope.

You go in and you say it is beyond what it should be, you get a declaration either that it is not valid or, if you are contesting it as being too broad because it contains something that you yourself have invented, you get a declaration that it is too broad and that you have the claim instead of the party that you are suing.

Those procedures are just commonplace and they can be [fol. 666] brought at any time. There is no time limit. The patent can sit there for years, and the first time that anyone is bothered by it, he goes in and brings his own personal nullity proceeding.

This agreement just says that Singer will keep out of the opposition, will let them have their patents in their countries provided that Singer gets the license.

On the other hand, the next paragraph deals with an entirely different situation. The first paragraph deals with non-action. That is a paragraph where you don't need to do anything; you just don't go in and oppose. You sit.

The next paragraph deals with places where you have affirmative action and it clearly segregates it. This paragraph says:

> "Singer and Gegauf each undertakes, in accordance with the laws and regulations of the Patent Office concerned, to facilitate the allowance in any country of claims as broad as possible as regards the subject matter of the patents and patent applications referred to above."

There is not a line in there that negates the right that is expressly given to each party to conduct the interference [fol. 667] in accordance with the laws and regulations of the Patent Office concerned. Mr. Weinstein is a great worrier, and his protest is that under those very laws people in interference have a right to try to limit the claim that was allowed. They can even turn and say that the claim they had themselves filed was invalid. We do not challenge that. We are perfectly aware that there are procedures and regulations established by the Patent Office in the United States under which interference proceedings are conducted and that that is one of the rules. And if you can find a line in there that negates their right to do it in accordance with the laws of the country and the Patent Office involved, I don't know where it is, nor do I know what the purpose of putting that clause in there is if it wasn't for that very reason.

Your Honor, there is a perfectly good reason for that. Singer wouldn't want a patent in the United States that was invalid. It drew these claims in the most artful way that it could possibly draw them after very lengthy study of all the facts. It drew an application that it knew was valid. It [fol. 668] drew an application and, even though the Patent Office requested that they change it, they changed it to expedite it and not because they thought there was anything wrong with the previous claim, Claim No. 19.

According to the Government itself, Singer was planning at that very moment to bring proceedings against the Japanese, including the biggest Japanese manufacturer in Japan. Why in the world would Singer want to get a patent or even ask for the right to get a patent or accept a patent that it did not have confidence was valid? It is to spend thousands and thousands of dollars to enforce it. It is to meet the biggest, the wealthiest of all the opponents in the world. Yet they tell us that we wanted an invalid patent in order to go forth and do battle with Brother and the other Japanese importers.

To show how utterly silly and fantastic that is, I would like to read some letters having to do with the actions brought in the United States with reference to these machines.

There is a letter, Defendant's Exhibit 43, dated September 17, 1958, from Mr. Stanford to Mr. Waterman. It refers

to the action brought by Singer against the Sewing Machine Exchange. He says:

[fol. 669] "Enclosed is a copy of a Complaint which was filed on September 10, 1958.

"This Complaint was filed against Sewing Machine Exchange, a retail sewing machine store in Anderson, South Carolina. The suit was filed with respect to a Universal zigzag stitch sewing machine which was purchased on June 23, 1958."

That, by the way is a machine that, by the stipulation of facts, infringes Gegauf No. 1. It is stipulated that no action has been brought by the company except with respect to a machine which did not violate Gegauf No. 1. The letter continues:

"This Universal machine is manufactured in Japan by Sanshin and imported into and distributed throughout the United States by Standard Sewing Equipment Corp. of New York. As you know, this machine infringes our Gegauf patent No. 2,832,302 and our Harris reissue No. Re. 24,370."

Now the letter continues:

"We have been advised that the proprietors of the Sewing Machine Exchange are not interested in defending this suit and are willing to enter a consent decree. However, since we are primarily interested in having [fol. 670] Standard Sewing Equipment Corp., the importers and distributors of the offending Universal machine, defend this suit we are endeavoring at the present time to encourage the attorneys for the Sewing Machine Exchange to contact Standard Sewing Equipment Corp. with a request that the latter party take over the defense of the suit."

The letter dated December 10, 1958, again from Mr. Stanford to Mr. Waterman, Defendant's Exhibit 44, refers to the action brought against Alco Appliance Distributing Company. It says:

"In our letter to you of September 17, 1958 we advised that a Complaint had been filed in the name of

The Singer Manufacturing Company against Sewing Machine Exchange, a retail store located in Anderson, South Carolina. This Complaint was filed with respect to a Japanese-made Sanshin machine sold by Sewing Machine Exchange under the trademark Universal. These Universal machines were imported into and distributed throughout the United States by Standard [fol. 671] Sewing Equipment Corp. of New York. As you know, our Complaint involved a patent infringement action alleging that the Universal machine infringes our Gegauf patent 2,832,302 and our Harris reissue patent No. Re. 24,370.

"Unfortunately, neither Sewing Machine Exchange nor Standard Sewing Equipment Corp. would defend this suit and as a consequence we accepted from Sewing Machine Exchange a consent decree of which a copy is inclosed. You will note that by way of this consent decree the defendant admitted the infringement and the validity of the several Singer patents."

Now comes the important paragraph:

"Since we were unable to come to trial with respect to the Sewing Machine Exchange suit, we filed on December 2, 1958 a second Complaint in South Carolina based upon the above-noted Gegauf and Harris patents. This second Complaint was brought against Alco Appliance Distributing Company, a retail store located in Columbia, South Carolina. This Complaint was filed with respect to a Japanese-made Sahnsin machine sold by Alco under the trademark Fleetwood which machine [fol. 672] was imported into and distributed throughout the United States by Fleetwood Industries, Inc. of New York, formerly S.K.S. Machine Company. We hope that either Alco or its supplier Fleetwood Industries, Inc. will defend the present infringement suit."

In Defendant's Exhibit 45, the Patent Department Report for the year 1958, it is stated on page 2 at the top of the page:

"For the purpose of obtaining an early adjudication of our Gegauf patent a second civil suit was filed in September, 1958 in the District Court for the Western

District of South Carolina against Sewing Machine Exchange, a retail dealer selling infringing Japanese-made machines in Anderson, South Carolina. Sewing Machine Exchange did not defend the suit and as Standard Sewing Equipment Corporation of New York, the importer and distributor of these machines, refused to protect its customer against our charge, Singer had to be content with a consent decree."

[fol. 672a] In the next paragraph it states:

"Following this consent decree we filed a second suit in South Carolina in December 1958 against Aco Appliance Distributing Company, a retail distributor of infringing Japanese-made machines in Columbia, South Carolina."

[fol. 673] These were not all the suits brought. A suit was brought against Brother, the biggest of them all, here in New York. That suit, of course, is in a jurisdiction which takes a long time to reach trial, particularly when there is a defendant who does not want to go to trial, and in fact it was due to that situation that these actions were brought in South Carolina in the hope that the company could get someone to come in to defend the litigation and get a quick decision on the merits.

There was no hope of that in New York. Brother took every advantage of delay possible, including a motion to stay the trial of the action until after the determination of this action, and by that motion it delayed the proceedings first by the fact that the judge's decision was not rendered for some six months, after which it took 60 to 90 days in order to ultimately comply, and that half-heartedly, with interrogatories that were asked.

And so, instead of being anxious to come forward with its money which it uses freely in the defense of other cases, your Honor, it has done everything it could to avoid the trial of the issue in this case.

[fol. 674] Mr. Elkins: I am sorry, your Honor. It seems to be testimony that is outside the documents under discussion.

The Court: Yes.

Mr. Pettit: They are motion papers, they are decisions,

and I will be glad to put them in the record, your Honor. Mr. Elkins has the answer of that very complaint in this evidence.

Mr. Elkins: They are talking about the money that was spent and so forth.

The Court: I suppose Brother did pay some American attorneys to take care of their interests. They received their money's worth.

Mr. Pettit: I am sure they did.

The Court: But we won't go into that. It has nothing to do with this case.

Mr. Pettit: I only want to show their delay and their not being willing to meet the issue.

The Court: Strictly speaking, they are not a party to this suit.

Mr. Pettit: That is correct. But the government has made the contention, the utterly silly contention, that we went to the Tariff Commission proceeding so that we would not have to meet the issue of validity. In the face of these three [fol. 675] actions and every effort that we could make to get a contest, every one of which they have read in full, they make the statement that the Tariff Commission proceeding was brought because Singer knew that validity of the patent would not be an issue.

The allegation, the statement is preposterous and cannot possibly be made in good faith. Singer has shown that it did everything it could to bring these people to trial and they have run from it as long as they could.

The Court: This would be a psychological point to take a five-minute recess.

(Recess taken)

Mr. Pettit: Now, your Honor, I go back to the agreement and say again that Singer was not seeking the benefit of any provision that would let it get an invalid patent. It has its patent office, it works on these year in and year out, and there is nothing that is more certain than that it is a mere trap to get a patent that won't stand up.

On the day before this meeting there was one further document, and that is the memorandum to Mr. Lightner prepared by Mr. Waterman. It is dated April 13, 1956. It [fol. 676] is significant because it contains the very first

mention of Japanese machines. I read the cable of the same day and remarked that up to that time there had been no reference to the Japanese or to purchases.

Now, in this next document there is one reference and the first and only reference prior to the execution of the Gegauf-Singer cross-license agreement. In the third paragraph it says, and I would like for you to notice the first words:

> "Gegauf's biggest fear is of Japanese machines coming into the United States to be sold at a lower price than his machines would be because of their low priced labor."

This, your Honor, is rather natural talk from a man who is aware of what the principal competitor in the world is doing. He had a fear, no doubt. Mr. Waterman goes on:

> "*I think his fears are well founded, and we did not* do anything to cause them to be other than along the line that he was thinking because one of the strong points of our argument for the agreement between our two companies is in order to fight this Japanese competition in their building of a machine that in any way [fol. 677] reads on the patents"——

and I think it is apparent that it means patent applications——

> "of ourselves and Bernina which are in conflict."

Now here is a plain reference to the argument that most obviously underlined it, that they would be better off not fighting each other, going ahead and getting a license and having their respective licenses in the various countries wherever they might turn out so that each could proceed his way in enforcing respective patents. I think there is no other significance that can be attributed to it. There is no mention of purchase between them, and that is the only reference that is made to Japanese at any time prior to the execution of the cross-license agreement.

Your Honor, the final document in this series is Defendant's Exhibit 31, a memorandum dictated by Mr. Stanford on April 15th, while he was still in Zurich, immediately fol-

lowing the execution of the license on April 14th. As we stated in our statement of purposes, this letter is significant.

"To show that:

"(1) Stanford, on arrival in Zurich, obtained from the Patent Office and studied with Kirker the Swiss [fol. 678] Gegauf patent, which he had not theretofore seen, and found that the principal claim read directly on the Singer 401 machine; Stanford ascertained that Gegauf had acknowledged all references which Stanford, without having seen such claims, thought might be used to destroy most of the claims of the patent; Kirker advised that such claim reading upon the 401 machine would stand up in the Swiss courts and that he was of the opinion that it was highly desirable for Singer to enter into an agreement with Gegauf concerning the conflicting patents and patent applications relating to the multiple-cam mechanism.

(2) Stanford concluded that Gegauf

(a) had a patent which would cover the 401 machine in Switzerland,

(b) had a German patent application, which in all probability would contain a claim which would dominate the 401 machine,

(c) had an Italian patent which might or might not be valid, and

(d) had an application pending in the United States, with a filing date 9 days prior to that of the Harris patent, which would dominate both the 401 and the 319 [fol. 679] machines in the United States.

(3) The Singer-Gegauf cross-license agreement referred to and was intended to cover and relate only to the patents specified in the preamble thereof, namely, the Harris U.S. patent and its corresponding foreign patents and patent applications, and the Gegauf Swiss patent and its corresponding foreign patents and patent applications.

"4) (a) The first sentence of Paragraph 1 of said agreement"—that is the one that I read, your Honor——

"related solely to opposition and invalidation proceedings and applied only to Germany, Sweden and Japan.

(b) The second sentence of the first paragraph of the agreement related to interference proceedings, and applied only to the United States and called for the conduct of interference proceedings in accordance with the laws and regulations of the United States Patent Office.

(5) (a) The second paragraph of said agreement, which, together with Paragraph 3, Singer considered by far the most important, provided that Singer would not attack any Gegauf machine on the basis of the Harris [fol. 680] patent or any corresponding foreign patent and would not on any basis attack the Gegauf machine then being constructed by Gegauf.

(b) Paragraph 3 provided that Gegauf would not attack any Singer machine on the basis of the Gegauf Swiss patent or any corresponding Italian or German patent or on the basis of Gegauf's United States patent application.

(6) The sole purpose and ultimate effect of the Singer-Gegauf cross-license agreement was to enable Singer to sell its 401 and 319 machines in the United States, Switzerland, Italy and Germany free from any liability for infringing the specified Gegauf patents and to enable Gegauf to sell his machine in all foreign countries where Singer had Harris patents or corresponding Harris patent applications free from any liability for infringing such Harris patents and patent applications."

[fol. 681] At the bottom of page 2 of that memorandum there is the statement that:

"Singer and Gegauf each undertakes not to do anything, either directly or indirectly and in any country, the result of which might restrict the scope of the claims of the other party. The obvious intent of this is to avoid opposition proceedings. In other words, Singer will not oppose the application of Gegauf and Gegauf will not oppose the application of Singer. The only

countries in which this clause or paragraph has any direct bearing is in Germany and Sweden."

Parenthetically I will state that I think he inadvertently left out Japan.

"In short, we will not oppose Gegauf's German patent application and they will not oppose any applications which we may have pending which relate to the multiple-cam type machine."

The next paragraph says:

"The last part of Paragraph 1 says that Singer and Gegauf each undertakes, in accordance with the rules and regulations of the Patent Office concerned, to facili-
[fol. 682] tate the subject matter of the patents and patent applications in which the agreement was drawn. The only place this would be of any importance is in the United States, and the sum and substance of it is that whichever party is entitled to the claim in accordance with the rules and regulations of the United States Patent Office will receive the claim. It appears to me that Gegauf has filed first, and we know as a matter of fact that Harris could not push his date back of his filing date then Gegauf would be entitled to the claim which has been suggested to them or which will be suggested to them when the interference is actually declared."

* * * * * * *

[fol. 683] Mr. Pettit: Instead of Mr. Wesely proceeding now, I will, instead, offer some exhibits.

I would like to introduce one sewing machine that I left out this morning. That is the Singer 403 replaceable cam machine.

Mr. Elkins: We object, your Honor, to the introduction of the replaceable cam machine. It is not within the part of commerce to which this case is directed.

[fol. 684] The Court: It isn't, but it may throw light on it. I don't know. We are dealing here with a mechanical patent, and this may throw light on it.

Mr. Pettit: Of course, your Honor, we claim that it is squarely within——

The Court: We will see. I don't know whether it is or not. I am going to take it. What relevance it has I will determine on all of the record.

We will mark this in evidence. This is the 403?

Mr. Pettit: That is the Singer 403 with the single replaceable cam.

The Court: What number is this marked?

(Received in evidence as Defendant's Exhibit 116.)

Mr. Pettit: And I would like to introduce in evidence the chart of this machine, the interior of this machine, showing in color the zigzag mechanism.

(Received in evidence as Defendant's Exhibit 116A.)

Mr. Pettit: And finally the zigzag mechanism mounted on a board that is contained in the 403 machine.

(Received in evidence as Defendant's Exhibit 116B.)

[fol. 685] The Court: This has only one cam?

Mr. Pettit: That's right, your Honor.

The Court: And that can be taken out and replaced?

Mr. Elkins: Your Honor, I would like to have the record show, seriously, that as the cam was taken out by an expert, Mr. Williams, it flew with a dangerous speed towards——

The Court: Close to the proximity of the judge's proboscis.

All right. Now let's see. This is a replaceable cam and that sets in there like that. I see. You just get that on one of those little gadgets. All right.

Do you see how this is done, Mr. Elkins? Like that. Do you see? I had no difficulty putting it in.

Now I will take it out. And it did not slip out of my hands. Perhaps I am more skillful than the expert.

This is the small model.

Mr. Pettit: That is the mechanism itself and it shows how the information from the cam is transmitted in exactly the same way as in the 401 machine.

[fol. 685a] The Court: This embodies what patents? Is this the Perla patent?

Mr. Pettit: No, your Honor. That is an entirely different patent. I do not believe that the patent covering that is mentioned in the statement of facts or otherwise.

[fol. 686] The Court: Anyway, it is a single replaceable cam machine, manually replaceable.

Mr. Pettit: That is right, and with the stationary cams that are part of the Johnson invention which are used to fix the needle position, the position of the needle, the needle can sew from any one of three positions, either center or on either side, and by using any one of these cams you determine which position the needle will operate from.

And that one is the same. Instead of cams, it appears at the base of the stack of cams in the 401 machine.

The machine whi[illegible] I am now about to offer in evidence is mentioned in paragraph 23 of the statement of facts. This is the Vigorelli machine that is made under Vigorelli's second Italian patent. You will remember it had two Italian patents. The first patent covered the machine that had a stack of cams and a single follower. This is made under a patent that deals with the taking of information from more than one cam at the same time. In that respect it is similar to the mechanism covered by the Johnson patent.

The Court: All right. We will mark it in evidence.

[fol. 687] Mr. Pettit: This is the Vigorelli.

(Received in evidence as Defendant's Exhibit 117.)

Mr. Pettit: This is the Vigorelli multi-cam machine, the machine carried multi-cam machine.

The Court: This is the modified form.

Mr. Pettit: This is the modified form that has a mechanism which permits the taking of information from more than one cam at the same time, and that is one of the machines and one of the patents that came squarely in conflict with Vigorelli.

The Court: Will you just repeat? I heard you, but I did not get the significance of what you said.

Mr. Pettit: When we were negotiating with Vigorelli, this machine and the earlier machine were both involved in our negotiations. This very machine, the one taking the information from two cams, had a priority date later than Johnson's but the earlier patent dealing with the single set of cams and a single follower had a priority date ahead of Johnson, and it raised very complicated situations of where Singer would be ahead in the United States but Vigorelli would be [fols. 688-689] ahead——

The Court: Was Vigorelli marketing these two machines,

the original form and the modified form shown by this exhibit, at the time that you entered into your agreement with them?

Mr. Pettit: Yes, yes.

The Court: He was.

Mr. Pettit: I think that appears in the statement of facts.

The Court: I think it does, too, but I want to be sure. We have marked this Vigorelli modified form as Defendant's Exhibit 117.

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[fol. 690] Mr. Elkins: Were any other United States patents filed by Vigorelli other than the one referred to in [fol. 691] these mechanisms?

Mr. Pettit: Not to my knowledge.

Mr. Elkins: At any rate, it is not in the statement.

Mr. Pettit: Do you know of any?

Is this a one-way answer? I am asking you. Do you know of any?

Mr. Elkins: I know of none.

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[fol. 692] UNITED STATES OF AMERICA

vs.

THE SINGER MANUFACTURING CO.

New York, May 11, 1961, 10.30 o'clock a.m.

(Trial resumed)

DISCUSSION OF SIGNIFICANCE OF EXHIBITS BY MR. WESELY:

Mr. Wesely: Good morning, your Honor.

May it please the court, we turn now to documents on negotiations which resulted in the Singer-Messerschmitt cross-licensing agreement. These negotiations, which extended from May of 1956 to April, 1957, related to the patent affecting the Singer 319 machine. Since 1956 Singer has manufactured and sold the 319 machine in Europe in sub-

stantial quantity, and there it is Singer's top-of-the-line machine.

Early in 1956 Singer learned that its Perla patent application, covering the concept of multiple cams each with its own follower, the concept embodied in the 319 machine, would be beaten in Europe by Messerschmitt because the filing date of Messerschmitt's patent application preceded Perla's by fourteen days. In the United States, however, Singer could rely on the fact that Perla had conceived his invention prior to the Messerschmitt filing date and would, therefore, [fol. 693] be entitled to the patent.

Singer's solution to the problem is found in capsule form in Defendant's Exhibit 87 in evidence, a letter dated July 10, 1956. In the second paragraph on page 2, Mr. Stanford, in advising Mr. Waterman, says that Perla would be entitled to the patent in the United States but that the reverse situation would obtain in Europe because of Messerschmitt's earlier filing of its application. Mr. Stanford goes on:

> "It is for this reason that it would be to our best interest to enter into an agreement with Messerschmitt."

That is it. Singer was entitled to the patent in the United States; Messerschmitt was entitled to patents covering the same subject matter in Europe, where Singer planned to sell substantial quantities of the 319 machine. To be free of Messerschmitt's claims in Europe, Singer entered upon negotiations with Messerschmitt and ultimately obtained the cross-license agreement.

Your Honor, the stipulated statement of facts, Court's Exhibit 1, sets forth some important matters which are not disclosed by the documents in evidence. For example, paragraph 19, sets forth that on April 1, 1954, Martin R. Perla, [fol. 693a] a Singer employee, was directed to design and develop an improved Class 306 machine which would incorporate a multiple-cam arrangement in lieu of the replaceable cam of the 306 machine.

[fol. 694] By May 10, 1954, Perla had completed his design with a plurality of cams, each with its own follower. This design was incorporated in the 319 machine. Tools for the production and assembly of the 319 machine could be prepared in a short period of time with little expense because it was of substantially similar construction to that of the 306

machine, except insofar as the cam mechanisms differed. Production of the 319 was ordered commenced to place these machines on the market as soon as possible.

In paragraph 42 of the statement of facts, your Honor, on or about July 15, 1955, Singer received a leaflet which described a Messerschmitt machine like the Singer 319 machine; that is, it had a plurality of cams each with its own follower.

The receipt of this leaflet was a matter of serious concern for Singer, because at this very time the 319 was being readied for distribution throughout the world, and as Mr. Stanford rightfully assumed and advised Waterman on July 19, 1955, Messerschmitt had probably filed a patent application covering this machine prior to the end of 1954. Singer's Perla application bore a filing date of December 8, 1954.

[fol. 695] Obviously there was substantial doubt as to whether Singer or Messerschmitt would have the dominant patent affecting the 319 in the various countries where it was manufactured and sold.

Turning to Exhibit 78 in evidence, your Honor, during a trip to Europe in the fall of 1959, Mr. Waterman and Mr. Stanford tried in every way to get a look at the Messerschmitt machine but found that Messerschmitt had not yet distributed its machine for sale.

When in Germany, Mr. Stanford discussed the situation with Mr. Wiegand, Singer's German lawyer, after which Dr. Wiegand wrote to Singer, Germany, that after having a discussion with the patent examiner in the German Patent Office, he believed that the situation was more complicated than Stanford's patent searches indicated.

That document, your Honor, is Plaintiff's Exhibit 10 in evidence.

In Plaintiff's Exhibit 13, on December 28, 1955, Mr. Stanford advised Singer, Germany, that the Singer Patent Department would continue to watch very carefully the patents and patent applications as they were published in the various countries of the world—aware of the complicated patent [fol. 696] situation, and that Messerschmitt might have a filing date earlier than the Perla filing date.

On January 19, 1956, Plaintiff's Exhibit 69 in evidence, Stanford advised Singer, Germany, that he was making

every effort to stay on top of the German patent situation and would welcome any suggestions Wiegand might have as to how Singer could better protect itself or improve its position.

As appears from paragraph 45 of the Statement of Facts, your Honor, and Plaintiff's Exhibit 70 in evidence, by March 15, 1956, Singer was stirred to a sense of urgency by receipt of a communication from a German patent examiner that it seems the German Perla application was being held in abeyance because of the prior filing of a German application. Singer believed that such prior filing had been made by Messerschmitt and asked that Wiegand obtain any and all information concerning the possible filing by Messerschmitt of patent applications covering sewing machines having multiple cams, any one of which might be selected to control the vibration of the needle-bar, and he suggested that there might be information available in the Belgian Patent Office. [fol. 697] As is set forth in paragraph 46 of the Statement of Facts, the stipulated statement of facts, on March 19, 1956, Singer requested that a conference be arranged with the responsible management of the Messerschmitt organization to discuss measures that might be taken to avoid conflicts between patent applications respecting the multi-cam machines, and such a conference was arranged for May 3, 1956.

Some time in the days immediately prior to April 30, 1956, Mr. Stanford, who was then in Brussels, combed the records of the Belgian Patent Office and found the Messerschmitt application, indicating that Messerschmitt had filed in Germany on November 25, 1954.

This is clear from Plaintiff's Exhibit 68 in evidence, and also from paragraph 47 of the stipulated facts.

With the discovery of the Messerschmitt Belgian patent, Singer realized that Messerschmitt's patents might issue in many of the principal foreign countries with claims which would dominate the 319. Mr. Stanford remarked "At least we appear to be ahead in the United States".

Plaintiff's Exhibit 28 in evidence, your Honor, is a letter from Mr. Stanford written to two members of his staff, [fol. 698] dated April 30, 1956.

In that letter Mr. Stanford commented on the fact that

Singer had been "Topped again by a few days"—and he said "sho is hell".

He added that at least it seems Singer was ahead of Messerschmitt in the United States, and the situation "Could be worse".

After the conference on May 2nd with representatives of Messerschmitt, Mr. Stanford added a postscript to his letter of April 30, 1956, Plaintiff's Exhibit 28 in evidence, stating that he had met with Messerschmitt and Messerschmitt had been tough to deal with.

Mr. Stanford said he thought the United States Perla application should be pushed very hard. He knew that Singer was ahead of Messerschmitt in the United States and would be granted a dominant patent here, and he wanted this established as soon as possible so that he could use it in bargaining with Messerschmitt, and to free the 319 throughout the world by cross-licenses with Messerschmitt.

In Plaintiff's Exhibit 71, a letter written from Karlsruhe, from Stanford to Mr. Williams, written on the morning of Friday, May 4, 1956, Mr. Stanford sets that he has given [fol. 699] the Messerschmitt situation much thought, and again urges that the United States Perla patent be pushed to the limit.

Obviously irritated by the tough bargaining session he had just been through with Messerschmitt, Mr. Stanford set forth his impression that Messerschmitt would negotiate only when they had "a gun in their back." And he turned his thoughts to the weapons that he had available for negotiation. The most important was to precipitate the interference proceeding in the United States between the Perla and Messerschmitt application, in which Perla would prevail.

The second was to use the fact that Messerschmitt was infringing the German counterpart of the United States Tiesler patent.

In Defendant's Exhibit 79, your Honor, a handwritten letter of May 9, 1956, Mr. Stanford writing from London to his colleagues in the Patent Department, evidences a greater concern over Messerschmitt's strength, having learned that Messerschmitt apparently had filed in many countries, and he discloses further that the president of Singer, with whom he had discussed the situation, was even more concerned.

On May 22, 1956, Defendant's Exhibit 80 in evidence, Mr. [fol. 700] Stanford first cabled and then wrote to Singer Italy, that inasmuch as Singer was preparing to manufacture the 319 machine in Italy, it was important to determine whether that machine infringed any of the claims of the Messerschmitt Italian patent.

This letter shows that Singer believed there was danger that its 319 machine would infringe the Messerschmitt Italian patent, and that several of the claims of that patent could be interpreted to cover the 319 machine.

The letter makes clear that Singer knew of no prior art which would function in Italy fully to anticipate certain of the claims of the Messerschmitt Italian patent.

Mr. Stanford asked that an opinion be obtained as soon as possible from Singer's Italian patent attorneys, as to whether the 319 machine would infringe the Italian patent of Messerschmitt.

The reply—there are two, your Honor, the replies to Mr. Stanford's letter were from Italian counsel, Barzano & Zanardo—are Defendant's Exhibits 82 and 84 in evidence.

First, Defendant's Exhibit 82 was in reply to a cable sent by Mr. Stanford.

[fol. 701] The second, Defendant's Exhibit 84 in evidence, is in response to a letter of May 22, 1956, which is Defendant's Exhibit 80 in evidence.

Your Honor, it was the opinion of Singer's Italian patent counsel that Singer's 319 machine infringed the Messerschmitt Italian patent as issued, inasmuch as under Italian law the claims of a patent do not limit the patent, and that the Messerschmitt Italian patent disclosed the idea of multiple cams, each with its own follower.

Italian counsel advised further that there was a good chance that the Italian courts would hold that the Messerschmitt Italian patent was anticipated by the prior art, that is, Gegauf, Vigorelli and Harris, but that this was an issue involving some risks to Singer—"some risks" is a quotation from the opinion letter of Messrs. Barzano & Zanardo.

It is plain that this opinion could be of little consolation to Singer which had and still has a plant in Italy in which the 319 would be manufactured and distributed, not only throughout Italy but exported throughout Europe.

The advice of Singer's Italian patent counsel that there

were some risks that the 319 would infringe the Italian [fol. 702] patent plainly demonstrated the need to be free of that patent.

Not only were there some risks but the consequences to Singer could be extremely serious.

This is evidenced by Plaintiff's Exhibit 75 in evidence, your Honor.

Plaintiff's Exhibit 75 in evidence is a letter of Singer in Italy transmitting a report of Italian patent counsel to Singer's Patent Department.

Singer Italy commented that the consequences of losing any patent battle with Messerschmitt in Italy, and I quote from this letter: "would certainly be much heavier for" Singer than for Messerschmitt, and that it anticipated that Messerschmitt would undertake legal proceedings to protect its Italian patent.

At this time, your Honor, as set forth in the stipulated statement of facts, Singer was tooling and otherwise preparing to manufacture the 319 in its Italian plant in Milan and it would be liable for royalties to Messerschmitt for each machine manufactured there, even machines exported to and sold in countries where Messerschmitt would not have a patent.

[fol. 703] Turning just briefly to Plaintiff's Exhibit 87 in evidence, to which I will return, your Honor, Mr. Waterman wrote that Singer would "make one hundred or even more" of its 319 machines for every one of Messerschmitt's.

In Plaintiff's Exhibit 75, Singer-Italy asked "whether or not it would be advisable to include Messerschmitt amongst the signers of the non-aggression pact." There is a plain meaning to this statement. Singer had a non-aggression pact with Vigorelli. Singer had a non-aggression pact in substantially the same terms with Gegauf, signed some five months later, which made two signers of such pacts. Non-aggression, of course, means no war, and the parties to the respective licenses had agreed not to make war. Here, in Plaintiff's Exhibit 75, Dr. Lando of Singer-Italy obviously is inquiring as to the advisability of having the same form of agreement with Messerschmitt.

There is another aspect of this letter, your Honor. Here is a statement written by an Italian, dictating in a foreign language to a secretary dealing in a foreign language. The

"the" of the non-aggression pact could easily be "a" non-[fol. 704] aggression pact. The fact is that these were separate agreements, and by the use of a single word the government would turn these separate agreements into one.

On May 25, 1956 Messerschmitt's patent lawyer Busselmeier examined the Singer 319 machine, and, if your Honor will recall, the conference on May 2, 1956 had ended on this note, that Messerschmitt's patent attorney wanted to look at the 319 machine and compare it with Messerschmitt's patents and patent applications.

On Mr. Busselmeier's examination of the 319 machine, he discussed the matter with Singer-Germany, with Mr. Adamson of Singer-Germany, who in turn reported to Singer in New York, and Singer-Germany reported that Busselmeier had said that the cam mechanism unit of the 319 was the same in principle with the Messerschmitt machine. This is Plaintiff's Exhibit 74 in evidence, your Honor, and some of the facts come from the stipulated facts in paragraph 50. Busselmeier said that an amicable settlement would be in the interests of both Singer and Messerschmitt because only competitors would profit by a dispute which would partly destroy or narrow the claims of either the Singer or Messerschmitt patents and that he and Singer should meet as soon as possible and both put the patent applications on the table, [fol. 705] which they believed to be infringed by the other's design.

Now, your Honor, the competitors were free at any time to challenge either the Singer patent or the Messerschmitt patent. Singer was free to litigate the Messerschmitt patent or to settle that litigation as it saw fit, but Singer could not be compelled to litigate the Messerschmitt patent for the benefit of its competitors.

On June 15, 1956, referring to Defendant's Exhibit 85 in evidence, Singer Germany passed along a letter from Busselmeier in which Busselmeier formally concluded that not only did the 319 machine agree identically in its essential principles with the machine covered by the Messerschmitt patent applications filed sometime before, but that even in structural details there were surprising conformities and identities. He suggested that he and Mr. Stanford prepare a proposed agreement, that inasmuch as Messerschmitt had filed the patent applications not only in Germany and in the

United States but also in a number of other countries, that agreement, if made, should be a global arrangement.

Turning to Defendant's Exhibit 86 in evidence, a letter of June 27, 1956 from Mr. Stanford to Mr. Adamson of Singer [fol. 706] Germany, Mr. Stanford advised Singer Germany that he agreed that an amicable settlement should be reached as only competitors would profit from litigation between Singer and Messerschmitt, that he had the impression that Messerschmitt felt that its position was favorable, which was fostered by the fact that it was Singer which had initially approached Messerschmitt, that he believed that within a week or two a conflict would develop between Singer's and Messerschmitt's United States patent applications and that it would be to Singer's advantage if this conflict developed before there were any further talks with Messerschmitt. Mr. Stanford advised also that no urgency should be displayed because Singer believed that when Messerschmitt learned of the conflict from the United States Patent Office, it would be stimulated into making further inquiries of Singer.

On or about July 10, 1956, as appears from the statement of facts, Singer learned from the United States Patent Office that its Perla application interfered with another patent application which Singer had no doubt was Messerschmitt's. Mr. Stanford advised Mr. Waterman of this fact and that he fully expected Messerschmitt to proceed with the [fol. 707] interference. He predicted that Singer would prevail over Messerschmitt in the interference because Perla had invented the concept of a plurality of cams each with its own follower before the earliest date on which Messerschmitt had applied for a patent, but that the reverse situation was true in Europe where Messerschmitt could establish a patent application date prior to Singer's application date, and this, your Honor, is the exhibit I referred to earlier in the presentation of these papers where Mr. Stanford says, and I quote:

> "It is for this reason that it would be to our best interest to enter into an agreement with Messerschmitt." We will beat them in the United States. They will beat us in Europe. The answer is cross licensing.

In Plaintiff's Exhibit 77 in evidence, on July 16, 1956, Mr. Stanford advised Singer-Germany that Messerschmitt probably would receive word shortly that its United States patent application had been placed in interference and that Messerschmitt would realize that this interference was with Singer's Perla application. Mr. Stanford said that for tactical reasons Messerschmitt should not be advised of the pending interference but that it should be told that Singer saw no [fol. 708] reason why a settlement could not be reached. Mr. Stanford didn't want any sense of eagerness to be displayed but he suggested that a definite place and date for a meeting be arranged and that, upon learning of the interference, Messerschmitt would make inquiry. That is in Plaintiff's Exhibit 77 in evidence. This letter again demonstrates that Mr. Stanford was using the United States interference as his major bargaining weapon to get a royalty-free cross-license with Messerschmitt and that there was not any other purpose.

In Defendant's Exhibit 89 in evidence, Mr. Waterman wrote to Singer-Germany on August 8, 1956 that he and Mr. Stanford would be traveling to Germany shortly, shortly after the 1st of September, because by that date Messerschmitt would have heard from the United States Patent Office of the pending interference between Perla and the Messerschmitt application, and, of course, that would be the ripe time to negotiate with Messerschmitt.

This exhibit, Defendant's Exhibit 89, together with Mr. Stanford's letter to Mr. Adamson of Singer-Germany on June 27, 1956, Defendant's Exhibit 86 in evidence, also demonstrates Singer's attempts to obtain a stronger bar- [fol. 709] gaining position with Messerschmitt.

A conference was arranged, and it was delayed from time to time until September 24, 1956, the delays being due in part to Singer's desire to ensure that Messerschmitt knew of the interference in the United States. This, your Honor, is in the stipulated facts, paragraph 53.

The interference was declared by the United States Patent Office on September 17, 1956. At the conference on September 24, 1956 agreement was reached that patent questions be settled by cross-licensing, but before signing the cross-licensing agreement Messerschmitt wanted to obtain certain releases from its distributor and exclusive licensee in the

United States, which is paragraph 54 of the stipulated statement of facts.

I turn now, your Honor, to Plaintiff's Exhibit 78 in Evidence, a letter dated November 2, 1956, in which Mr. Waterman wrote to Mr. Lightner, who was then in Tokyo, saying that he and Mr. Stanford had reviewed the situation with Messerschmitt's Washington attorneys and that the release of the exclusive licensee in the United States had been executed. Messerschmitt's Washington attorney was entirely [fol. 710] in accord with the draft agreement that had been left with Messerschmitt in Munich and advised that a director of Messerschmitt would be in the United States in about a month and at that time the agreement would be signed, and with the signing of this agreement, Mr. Waterman expressed the hope that it would settle all Singer's patent problems concerning zigzag machines where there appeared to be some danger. Said Mr. Waterman, "I think we are really very fortunate."

The Court: Do I understand, Mr. Wesely, that as a result of the negotiations between Singer and Messerschmitt there was only an exchange of patent rights or licensing rights such as affected the 319 Singer machine which was manufactured and marketed entirely outside the United States?

Mr. Wesely: Yes, your Honor. The 319 machine is no longer manufactured in the United States. It was in earlier years.

The Court: But this Perla patent and the Messerschmitt patent covered only the 319 machine?

Mr. Wesely: Your Honor, the patent also disclosed the control of the needle bar by cam mechanism and also disclosed with that the control of the feed by cams. Singer was manufacturing the 319. In its machine it used the Perla [fol. 711] concept of a stack of cams each with its own follower. Messerschmitt did also, your Honor.

The Court: Did Singer at any time grant to Messerschmitt a license under the Harris Reissue patent? The agreement that is signed is kind of broad.

Mr. Wesely: Your Honor, the agreement relates only to the machines disclosed in the drawings annexed to it.

The Court: All right. I don't have the drawings but I think they have since been submitted to me.

Mr. Wesely: Your Honor, the drawings are Exhibit 84 to the statement of facts.

The Court: All right. I have them now. The trouble is I did not see the drawings before.

Mr. Wesely: I think it might be helpful to refer to the chart which was submitted as an aid to the court yesterday which sets forth the relevant provisions of the three agreements, including the Messerschmitt cross-licensing agreement.

The Court: All right. You may go ahead.

Mr. Wesely: I should like to return to the licensing agreement, your Honor, and answer some questions that were [fols. 712-713] raised during the course of the government's presentation.

. . . . . .

[fol. 714] On December 11th, six days later, the Singer patent department reported to the company on the infringement status throughout the principal countries of the world of the Singer 319 machine. It advised, first, that the 319 infringed Belgian and Italian patents owned by Messerschmitt and that it presumed that because there were corresponding applications in Germany and Great Britain, there would soon issue in those countries patents which could be infringed by the 319 machine.

It advised further, and this appears in the statement of facts, paragraph 56, and Plaintiff's Exhibit 84 in evidence, that Messerschmitt had a corresponding United States application and that Singer expected to prevail in the interference proceeding which would result.

Third, the question before Singer was what action to take in connection with Messerschmitt so that Singer could freely manufacture and market the 319 machine in Germany, Belgium, Italy and Great Britain.

Fourth, it would be to Singer's advantage to have a cross-licensing agreement executed as soon as possible in view of the present or potential infringement of the 319 machine in [fol. 715] Italy and Great Britain, in both of which Singer had manufacturing plants.

Fifth, Messerschmitt undoubtedly realized that it would lose the United States interference proceeding and that its machine would be subject to an action for infringement by

Singer based on several Singer-owned patents. Those patents were the Perla patent when issued, the German Tiesler patent previously referred to, and the Way United States patent concerning the manner of mounting the motor in a sewing machine.

The patent department recommended that Singer make no further overtures to Messerschmitt lest this be interpreted as eagerness stemming from a weak position.

On December 21, 1956 Singer was advised that Messerschmitt would sign the cross-licensing agreement without any arrangement under which Messerschmitt would manufacture sewing machines for Singer. That is paragraph 57 of the statement of facts. Singer received the cross-licensing agreement and considered it deficient because it would license Messerschmitt to make machines disclosed in Messerschmitt's German applications without specifying the applications. It had been agreed that Messerschmitt would be licensed to make a particular Messerschmitt machine disclosed in specific Messerschmitt applications.

[fol. 716] On March 8, 1957, Defendant's Exhibit 91 in evidence, Mr. Stanford so advised Messerschmitt's Washington lawyers and further advised that Mr. Waterman expected to be in Germany and, if there was any need for further discussion, it could be had at that time. Mr. Stanford noted in Defendant's Exhibit 91 that this type of patent agreement, quoting from Mr. Stanford, "permits each party to continue to manufacture and sell its respective machine throughout the world without the necessity of costly interference and opposition proceedings as well as protracted patent litigation."

On April 16, 1957 there was a conference of Singer and Messerschmitt representatives, and the licensing agreement was reached and signed. It provided, your Honor:

> "1. Singer will not bring any infringement action against Messerschmitt under the rights derived from patents now issued or to be issued in any country with respect to subject matter disclosed" in three drawings identified and annexed to the agreement—and continuing with the agreement—"and when embodied in [fol. 717] sewing machines manufactured and sold by Messerschmitt.
>
> "2. Messerschmitt will not bring any infringement

action against Singer under the rights derived from patents now issued or to be issued in any country with respect to subject matter disclosed in Singer's German patent applications S 46,453, filed on November 23, 1955, shown in drawings annexed to the agreement and another patent application shown in drawings annexed to the agreement——

"and when embodied in sewing machines manufactured continuing reading from the agreement——

and sold by Singer.

"3. Singer and Messerschmitt each agrees not to institute in any country any opposition, nullity or invalidation proceedings against or otherwise to attack in any country the other's patents or patent applications corresponding to Messerschmitt's constructions as illustrated in the drawings indicated in paragraph 1 and to Singer's German applications indicated in paragraph 2, and to immediately withdraw any such proceeding if [fol. 718] it has already been instituted, provided, however, that if such patents and patent applications are or have become involved in a patent office priority determining proceedings, such as a United States interference or Canadian conflict proceeding, then both parties will work together in order to settle such proceeding in accordance with the laws and regulations of the patent office concerned and in the spirit of this agreement."

In short, the three Messerschmitt machines were covered because there were infringements of Singer patents in each of those, and Messerschmitt was to be free to manufacture those machines.

Your Honor, after the agreement was signed Mr. Waterman cabled Mr. Lightner of this fact and he said that the 319 machine was completely free "same idea as with Vigorelli and Gegauf." That is Plaintiff's Exhibit 88.

There are portions of Plaintiff's Exhibits 88, 142 and 87 which deal with the assignment of Messerschmitt's United States patent application. The assignment of its foreign patents is discussed in other documents having to do with those matters.

[fol. 719] Plaintiff's Exhibit 87 in evidence amplified a portion of his cablegram concerning the making of the cross-

licensing agreement. Mr. Waterman wrote to Mr. Lightner on the day after the signing of the agreement that the agreement precluded Messerschmitt from taking any action against Singer machines which have in them the features of the 319 Perla patent application and that similarly Singer would take no action against Messerschimtt's presently-designed machine. Waterman mentioned Messerschmitt's financial condition operated in Singer's favor and that Messerschmitt did not want to incur any further expenses in present or future interferences. The 319 machine was thus cleared for manufacture and sale throughout the world, and Singer had been able to obtain this freedom without royalty even though, as Mr. Waterman's letter states, Singer would make a hundred machines for every one of Messerschmitt's.

* * * * * * *

[fol. 720] There is just one more document on this cross-licensing, your Honor, that is important. It shows the value of the Messerschmitt agreement and it is spelled out in a report of the patent department for the year 1957. That exhibit, your Honor, is Plaintiff's Exhibit 67 in evidence and here the patent department reports:

> "Probably the most important single accomplishment of the past year was the agreement reached with Messerschmitt A. G. of Germany. This agreement permitted Singer to continue to sell the Class 319 machine in all of the countries of the world without fear of being charged with patent infringement by Messerschmitt, released us of all possible charges which may have been [fol. 721] made for past infringement of its patents, and made possible future marketing of the Class 320 machine."

Coming down the line:

> "In return, Singer agreed that Messerschmitt could contine to sell its multiple-cam machine (which is similar to our Class 319 machine) in the United States."

Now, your Honor, I would like to turn to those papers which have come to be known as dealing with the Messerschmitt foreign patents. At the conference in Germany dur-

ing which the cross-licensing agreement between Singer and Messerschmitt was executed, Messerschmitt indicated that it would assign to Singer the patents and patent applications it had in various foreign countries under which Singer was licensed to manufacture the 319 machine.

Plaintiff's Exhibit 88 in evidence is Mr. Waterman's cable to Mr. Lightner in which he advises Mr. Lightner that the cross-licensing agreement has been signed, and he further advises Mr. Lightner that the foreign patent situation would be studied. It is clear from the face of this cablegram, your Honor, Plaintiff's Exhibit 88, that the reference in the cable to "Japanese" applies only to the foreign patent [fol. 722] situation and not to the United States, and in Plaintiff's Exhibit 88, Mr. Waterman is simply advising Mr. Lightner that he would study the situation to determine if the cost of maintaining the patents was justified in terms of protecting the 319 from infringement. He was going to study the situation to see if there were 319 type machines which would infringe the patent and which would interfere with the proper protection of the Singer 319 machine.

The Japanese were Singer's biggest competitor, and if the Messerschmitt patents had any value as against its biggest competitor, then there might be some value.

Defendant's Exhibit 94, Dr. Wiegand's letter to Mr. Stanford of May 14, 1957, shows that at the beginning of the discussions between Singer and Messerschmitt on this matter, foreign patents, Messerschmitt's primary consideration was the cost of maintaining foreign patents. Wiegand reported on his discussions with Fuchshuber and Busselmeier that they thought that the new Board of Directors of Messerschmitt would agree to assign the foreign patents to Singer if Singer would prosecute the applications, pay the maintenance costs and grant back a license to Messerschmitt. In [fol. 723] reply to this letter, Mr. Stanford wrote, Plaintiff's Exhibit 97:

> "In return for the assignment of these patents and patent applications we would agree to assume the prosecution of all the applications, pay the cost of obtaining the patents which have been issued to date, and pay the yearly fees for the maintenance of the patents. In addition, we would agree to grant Messerschmitt a license under each of the patents. In short, we would like an

assignment and agreement similar to the one we now have with Messerschmitt for the United States application Serial No. 548,481."

* * * * * * *

Your Honor, the government has introduced these documents on the Messerschmitt foreign patent negotiations to [fol. 724] show Singer's purpose and intent, and in that connection I would like to refer to page 5 of Defendant's Exhibit 95 in evidence, which is a memorandum of this October 16, 1957 conference:

"During an interval of the conference in which the gentlemen Waterman and Stanford had an appointment regarding a different matter, the above-mentioned principles were drafted and translated into English by Patent Agent Niemann and Patent Agent Mr. Busselmeier.

"When the gentlemen returned from their meeting and read over the wording of the above statements, Mr. Waterman made the objection that the way proposed would under no circumstances be acceptable, because this wording would mean a clear infringement of the antitrust law in the USA. It was tried then to find a more simple wording of the above-mentioned points or to fix this wording without it becoming expressly contents of the agreement to be made. But against this too Mr. Waterman has apprehensions because such agreements must be made complete and according to the truth and because he would, when questioned on the [fol. 724a] completeness of the agreement, not be able to declare with a good conscience that no additional arrangements have been made."

After this conference, Mr. Waterman reported to Mr. Lightner on these negotiations.

[fol. 725] Government's Exhibit 103 in evidence, according to the last paragraph of the first page, Mr. Waterman says "Just to show you what we went through in enduring the negotiations I am enclosing two typewritten sheets. All this about sub-licensing others promiscuously and division of

territories where the machines would be made and sold was pushed aside very quickly."

These exhibits, your Honor, do show Singer's intent. They demonstrate that when certain proposals were drafted and Singer learned of them, Singer objected on the ground that they constituted a violation of the United States antitrust laws.

The exhibits show that Singer refused to enter into any agreement, written or oral, which it believed violated the United States antitrust laws.

The exhibits demonstrate further that Singer would not enter into any written contract unless that contract expressed the complete understanding of the parties to the agreement.

Coming to Plaintiff's Exhibit 104 in evidence, this letter from Singer Germany to Mr. Stanford, it reports a visit by Mr. Busselmeier, who represented Messerschmitt and had telephoned Mr. Adamson of Singer Germany to arrange for [fol. 726] a meeting to discuss a matter which was so highly confidential that it could not be treated either on the telephone or in a letter.

What was this highly confidential matter?

Well, when Mr. Busselmeier came he said that Messerschmitt was considering selling its sewing machine business and that it thought that such a sale would be facilitated if the patent rights were included as part of it.

Busselmeier was obviously sounding Singer out to determine if it was going to buy the Messerschmitt sewing machine business. He even named a price.

Singer was not interested in buying Messerschmitt's sewing machine business but had indicated an interest in acquiring the Messerschmitt foreign patents covering the 319 machine, the sales of which were doing very well in Europe.

The government attached significance to certain language in this letter.

The fact of the matter is that Busselmeier came to Singer with a sales talk and Singer replied with sales talk.

Mr. Waterman told Busselmeier that Singer was not interested in acquiring Messerschmitt's sewing machine busi- [fol. 727] ness; nor was Singer interested in Messerschmitt's foreign patents if they had to buy the business to get them, but that "Singer believed that Messerschmitt

might care to get a substantial round sum" $25,000—for its patents.

As the letter recites "the conference thus ended, unfortunately, with little prospects of the proposed Singer-Messerschmitt agreement being signed in the near future."

Busselmeier suggested the alternative that if Messerschmitt sold its sewing machine business, Singer grant the same license to the purchaser as granted to Messerschmitt.

Defendant's Exhibit 97 in evidence is where Singer redrafted the agreement to cover this situation and forwarded it to Messerschmitt.

The documents reflect that nothing further was done in the matter, which was in fact the case—and there the negotiations ended.

The Court: Thank you, Mr. Wesely. You have very ably presented your client's case.

Suppose we take a five-minute recess.

(Recess)

Mr. Pettit: Your Honor, I would like to offer in evidence [fol. 728] at this time the Messerschmitt sewing machine. This is the Messerschmitt machine that is the equivalent of the 319—and when you put the 319 next to it (demonstrating), you can see the identity of the two mechanisms.

The Court: Any objection?

Mr. Elkins: No objection.

The Court: Received in evidence.

(Marked Defendant's Exhibit 118 in evidence.)

The Court: I see there are two sets of cams—I have just observed that there are two sets of cams on the Messerschmitt machine.

Mr. Pettit: They are merely divided by a cog here. It is the same principle—a stack of cams and a follower for each one.

The Court: I note that in one stack, for instance, I see six cams which are located on what I would call the front of the machine, that is, the part that faces the operator ordinarily, and the other stack has four.

Mr. Pettit: Yes.

The Court: Is there any significance in that arrangement of six and four in groupings?

Mr. Pettit: The only significance is that ten cams and they [fol. 729] are arranged in such an order that there is a cog in the middle.

The Court: Does each cam have a different configuration on perimeter?

Mr. Pettit: Yes, and each cam has its own follower.

The Court: And the follower is selected for the cam by moving one of these levers at the top on the Messerschmitt?

Mr. Pettit: That is right. The particular cam is chosen by using this (indicating).

The Court: Let us see the mechanism of the 319.

There are five cams and five levers to be raised, which provide the individual follow-up of each particular cam.

Mr. Pettit: That is correct, your Honor.

The Court: Can two levers be put into operation simultaneously on the 319?

Mr. Pettit: They may, and also on the Messerschmitt.

The Court: And on the Messerschmitt, too?

Mr. Pettit: Yes, and, your Honor, to the extent that they can be put in operation at the same time, they are antedated [fol. 730] by Johnson.

The Court: Except that Johnson accomplishes the follow-up of two cams by a different means.

Mr. Pettit: Two cams by two followers, but it embodies the principle of taking information from two cams by separate followers at the same time.

It was the Vigorelli machine that has the one follower to the adjacent cams.

The Court: I see: Johnson has it separate.

Mr. Pettit: Johnson has it separate, and what is involved here is the idea of a follower for each cam.

Johnson had two followers. On this you are able to get a patent because it has a follower for each cam.

The Court: The basic invention of the Johnson patent, then, so that I understand it, was that it——

Suppose you state it.

Mr. Pettit: It embodies the idea of taking information from two cams at the same time by separate followers.

The Court: How about the Perla invention?

Mr. Pettit: Only because—I do not know whether it is a [fol. 731] step further or not, but at least it is a step in

addition, that it provides for a follower for each cam. The patentable concepts sometimes are a little narrow.

There is nothing in the Perla application except the idea of the separate follower for each cam, capable of being used together.

The Court: Does the 319 employ the Johnson invention?

Mr. Pettit: To the extent that it uses or takes information from two cams at the same time.

The Court: The Messerschmitt machine, which is now in evidence as Exhibit 118, I understand it is not disputed that this does employ the same invention which is set forth in the Perla application and allowed in the Perla patent.

Mr. Pettit: I think that is even set forth in the statement of facts.

The Court: Does this Messerschmitt machine also employ and embody the Johnson invention?

Mr. Pettit: I do not know whether I can answer that except as I have—that it takes the idea of taking information from two cams at the same time and embodies the Johnson idea.

[fol. 732] The Court: All right, thank you.

Mr. Elkins: Your Honor, may I ask if we are going to have testimony as to the general subjects that we have been discussing here at the bench for the last three or four minutes?

The Court: Mr. Pettit indicated he might call an expert on this subject to describe the various machines, so that you will have it on the record.

Mr. Pettit: Your Honor, I believe that everything we have discussed here is in the statement of facts agreed to.

The Court: But on any other matter that is not set forth in the statement of facts.

Mr. Pettit: Is there anything here that is not in the statement of facts?

Mr. Elkins: My question was directed to the general field, and there are a great number of things—for example, this Messerschmitt machine, as we see it here, Exhibit 118, does not follow the subject matter of the Messerschmitt United States patent application. There is provided in that Messerschmitt application other mechanisms.

Mr. Pettit: That is correct. I am just getting ready to deal with that, and that is the reason I am bringing this

[fol. 733] machine out so that you can see that it does not have that.

The Court: I appreciate this colloquy but I do not approve of it.

Suppose we go back and try our case.

DISCUSSION OF SIGNIFICANCE OF EXHIBITS BY MR. PETTIT

As I mentioned before, your Honor, the Messerschmitt matter is divided into three rather separate and distinct parts.

Mr. Wesely addressed himself to the cross-license agreement that was concluded—that was the first step.

He also addressed himself to the matter of the attempt of Singer for a certain length of time to buy Messerschmitt's foreign patents.

The third one, the one to which I will now address myself to, involves the acquisition by Singer of Messerschmitt's U.S. application, which application and the drawings in it covered this machine insofar as this machine incorporates the idea of multiple cams with separate followers for each cam.

That application also had in it a disclosure of cams to operate the feed mechanism of the machine. That was not the movement of the needle-bar but the movement of the feed mechanism. That moves the material through the [fol. 734] machine.

The Messerschmitt machine, as Mr. Elkins has just indicated, does not embody that concept, nor does the 319 Singer machine.

After cross-licenses had been obtained, there was left, then, the problem of what would become of the Messerschmitt application in the United States and the Perla application of Singer's in the United States.

It was perfectly apparent, and it was a fact, that the Perla concept, the Perla priority date was ahead of Messerschmitt.

Messerschmitt had no prospect of success in the United States, and that was shown in various documents that were marked and read from by Mr. Wesely.

It was a conceded fact that Singer would beat Messerschmitt in the United States, and that was Singer's bargaining power with Messerschmitt, with reference to foreign

situations, and the right to get into foreign countries with Singer's 319 machine.

Now the result of that was that so much of the Messerschmitt application as related to the multiple cam machine affecting the needle-bar would have to be eliminated from it and abandoned—and in fact when Singer obtained it, it [fol. 735] was because the material in it belonged then and could go in only to the Perla application, and that feature is embodied in the Perla patent.

That left the Messerschmitt the U.S. application relating only to the mechanism controlling the feed.

Now with that in view, Messerschmitt, as will be seen from Government's Exhibit 89, a letter dated April 25, 1957, addressed to Dr. Wiegand and signed by Mr. Stanford, verbally agreed at the conclusion of the cross-license agreement to assign to Singer all of its rights in this United States patent application.

This letter states:

> "In return for this assignment it is our understanding that Singer would continue at its own expense the prosecution of this application before the United States Patent Office for the purpose of acquiring, if possible"——

and I wish you would note the words "if possible"——

> "a good and valid patent".

Now the significance of the words "if possible" is that everyone realized that it very well might not be possible, and that is the explanation why Messerschmitt assigned it without any cost if Singer would do the prosecuting and [fol. 736] spend the money and try to get the patent, and if it succeeded would then give Messerschmitt a license.

Now the end of the story I want to tell you is, so that you can follow it as you go along, it was not possible. Singer did prosecute and Singer did try to get the patent and every claim was rejected by the Patent Examiner, and it has now become finally and officially abandoned.

We will offer the documents that show that—I have shown them to the government, and there will be several other documents that we want to put in at the same time.

So here was a situation in which we were to take and try to prosecute it, with reference to a very particular and limited situation, and try to get a patent.

You will remember that this is the same feed mechanism that Singer was interested in when it was dealing with Vigorelli. Vigorelli had another patent, entirely distinct, that we have been talking about in this hearing—and you had read some letters just yesterday—and Singer was interested there in seeing whether it could acquire or get rights under a patent relating to feed mechanisms—and as I was [fol. 737] told later, it ended up paying Vigorelli $25,000 in order to get a license for Vigorelli's feed mechanism.

I point this out merely to show that there was an interest in Singer in trying to get the feed mechanism.

They sent documents to accomplish this assignment.

There then follows a series of documents which the government read from at length, and they stress non-transferability, non-assignability and various other features and items that appear in it.

This whole series of letters deals with the fact, first, that Singer was not willing to spend its money and its time in trying to get a patent and then, if it succeeded, having Messerschmitt have the right to give a license to anybody and everybody in the world. Quite obviously it protested, and a good part of this correspondence is merely setting forth Singer's not only objection but utter and complete unwillingness to permit Messerschmitt to have the right to license this patent, to assign this patent freely to people if Singer was going to spend the money to get it—and what good in the world would it be to Singer after it spent its money to get it if Messerschmitt could license it to anybody [fol. 738] in the world.

Other features of these letters relate only to the fact that Messerschmitt was afraid that the form of the agreement would affect the cross-license agreement that had already been made, and therefore they were arguing for language that in dealing with this particular transfer of this particular portion of the application, that that language would not adversely affect them under their prior agreement, and they therefore tenaciously fought for language that would still leave their rights under the license agreement in effect—and that is all that this language means, running through several

letters in which one was wanting transferable, assignable rights, and the other was wanting non-transferable and non-assignable rights.

In Defendant's Exhibit 92, May 14, 1957, a letter to Mr. Stanford, Dr. Wiegand states:

> "Messerschmitt is willing to execute an agreement on the general lines of the document (3)"——

a document which had been sent by Mr. Stanford——

> "'and is willing to accept a 'nonexclusive, *nontransferable* and royalty-free license' as regards U.S.-Patent [fol. 739] Application Serial No. 548481 provided that"

certain conditions were set forth in it.

In other words, with reference to any patent that might issue on the feed mechanism, he recognized that he should accept and was willing to accept a non-exclusive, non-transferable and royalty-free license. And, your Honor, that had absolutely nothing to do with the 319 machine, as was implied so many times by the government—at least I understood that is what they implied.

On page 2 of this same letter he says:

> "The main objection of Messerschmitt was made to the word 'nontransferable license'. I succeeded, however, in overcoming this objection by suggesting a reference to the agreement of April 16, 1957, in order to make clear that Messerschmitt's right to grant licenses as regards their constructions K1.52KE, K1.53Ke and K1.54KE remains unaltered."——

which makes it perfectly clear that Messerschmitt was worrying only about the earlier license agreement and under that they retained all their rights to grant licenses.

That provision was incorporated in the agreement of assignment, and the net result is that Singer obtained the [fol. 740] assignment for the purpose of trying to prosecute it, which it did unsuccessfully, with the understanding that it would give a license to Messerschmitt which Messerschmitt could not then go around and license to anybody in the world, but that Messerschmitt would retain all of its

right and freedom to license that it had under the license agreement which related to the 319 machine.

Now there is another point with respect to this. Mr. Weinstein was heard to say time and again that we obtained this application even though we were licensed under it. Now it simply is not a fact. We were not licensed under any patent that could come out from this application, and the reason we were not licensed under any patent that might come out from this application is that the license that was granted in the cross-license agreement specified with great particularity what was licensed. And, your Honor, I wish you would note this, because this is in flat contradiction to something said by the government, and therefore I would like for you to look at the divisions that appear on the right side of this chart of the three different agreements, because that agree-
[fol. 741] ment shows exactly what was licensed under the cross license agreement.

Do you have the chart or was that taken away?

The Court: I have it right here (indicating).

Mr. Pettit: You will notice it says:

> "Messerschmitt
>
> will not bring any infringement action against Singer under the rights derived from patents now issued or to be issued in any country with respect to subject matter disclosed in Singer's German patent applications No. S.46,453 VII/52a as filed on 23rd November, 1955, and shown in the annexed drawing (Figures 1-62) and No. S.46,580 VII/52a as filed on 2nd December, 1955, and shown in the annexed drawings (Figures 1-13) and when embodied in the sewing machines manufactured and sold by Singer."

Now if one will look at the drawings he will find that no mechanism was included controlling the feed of the machine.

It is therefore perfectly clear that the license did not extend to this type of feed mechanism if it came out of the patent under this other application.

[fol. 742] What Singer's got a right to make under the Messerschmitt license was a machine it was making and is described in the drawing.

Therefore Singer was in the position that although it was

interested, very much interested in this feed mechanism or in some kind of feed mechanism, if it did not take this patent, it could be foreclosed in the United States from the use of that kind of mechanism.

This is all pointed out in a letter of May 24, 1957, Government's Exhibit 94, where in a letter to Adamson by Mr. Stanford, it is stated:

> "In answer to your questions we would state that under the Singer-Messerschmitt agreement of April 16, 1957 Singer agreed not to enforce against Messerschmitt or any of its licensees and customers any rights derived by Singer from any patents in any countries with respect to subject matter disclosed in certain specified Messerschmitt drawings which were annexed to the agreement. These drawings disclose three existing Messerschmitt sewing machines of which none employs the automatic feeding mechanism which is disclosed in the Messerschmitt U.S. patent application Serial No. [fol. 743] 548,481 which forms the subject matter of the proposed new Singer-Messerschmitt agreement mentioned in the first paragraph of this letter.

It goes on to say in the second paragraph, on page 2:

> "In other words, although Messerschmitt in the United States has the right to make and sell machines of the type designated in the Singer-Messerschmitt agreement of April 16,"——

which is the cross-license agreement——

> "and to license any other parties to make and sell such machines in the United States, under the newly proposed Singer agreement, Messerschmitt will have the right to make and sell in the United States on its own account machines incorporating the automatic feed of patent application Serial No. 548,481, they will not be able to transfer such right to other parties. We do not believe that the two agreements mentioned above conflict with each other."

Now your Honor, the end of the story on that attempt to get a patent and Singer's doing it "if possible" is set forth

in the rejection by the Patent Office, which is set forth in [fol. 744] Government's Exhibit 181 at pages 87-90, and by the subsequent communications between Singer and the U.S. Department of Commerce.

The first of these reads—it is addressed to the Commissioner of Patents—"Will you kindly advise the date upon which the above entitled patent application became abandoned?"

The reply says: "Responsive to letter filed May 9, 1961.

> "This application became abandoned on May 4, 1961, for failure to prosecute within the six-month statutory period from the last Office action. See Rule 135 of the Rules of Practice."

Singer had reached the end of the line and stopped trying after several rejections.

Now your Honor, that is all on that.

The Court: Off the record.

(Colloquy off the record.)

(Adjourned to May 15, 1961, at 11 A.M.)

[fol. 745] UNITED STATES OF AMERICA

vs.

THE SINGER MANUFACTURING CO.

New York, May 15, 1961, 11.00 o'clock a.m.

(Trial resumed.)

Mr. Pettit: Your Honor, we have gone through the Vigorelli cross-license and the Gegauf cross-license and had reached the stage of taking up the Gegauf assignment.

I would like to read first an extract from the Annual Report of the Patent Department for the year 1956, Defendant's Exhibit 35. This sums up the position of the Patent Department as to what it had done with respect to these license agreements. This is the report that goes to Mr.

Waterman, to the President and to all the officers of the company.

> "During the past year the Patent Department continued to be actively involved with the patent situation surrounding the Singer Classes 401 and 319 machines. As mentioned in our 1955 Patent Report" (and I am reading now from page 5) "there appeared to be at [fol. 746] least two outstanding groups of patent applications owned by competitors which would interfere with the manufacture and marketing of the Classes 401 and 319 machines in the various principal countries of the world, such applications being owned by the Italian firm of Vigorelli and the Swiss firm of Gegauf-Bernina. In 1955 Singer was able to negotiate a free license agreement with Vigorelli, and during 1956 a similar agreement was executed between Singer and Gegauf-Bernina."

I think that shows at least what Singer thought that Singer had done.

We come, then, to the first memorandum, the first written document dated subsequent to the signing of the Gegauf-Singer cross-license agreement. That is Government's Exhibit 27. You will notice it is dictated by Mr. Waterman in Milan with reference to a conference held in Milan on April 20, 1956, which was just one week subsequent to the signing of the cross-license agreement.

At this point I want to call attention to the fact that we [fol. 747] still do not know whether the government contends that the cross-license agreement was part of the conspiracy or was not.

COLLOQUY

The Court: Perhaps the government will give you that information now.

Mr. Elkins: I would be happy to, your Honor. If opposing counsel will tell us what cross-license agreement he is referring to, the one in particular——

Mr. Pettit: Singer-Gegauf.

Mr. Elkins: Singer-Gegauf, your Honor, we did take the position that that is unlawful even aside from the conspiracy.

The main thrust of the conspiracy as charged by the government relates to the assignment by Gegauf to Singer of the Gegauf two United States patent applications, and, as we say, for the purpose of enabling Singer to use the patents resulting therefrom in conjunction with its own in order to limit or exclude competition from Japanese manufacturers.

Mr. Pettit: Forgive me. I just asked that because I didn't intend to give way for a speech.

The Court: When we ask a question we must give the witness an opportunity to make an answer, so sometimes that is one of the perils of asking the witness a question. I do [fol. 747a] not think he intends to make a speech even though that may be the effect of it. I will not deny him that privilege.

Go ahead.

[fol. 748] Mr. Elkins: I am merely trying to put it in its proper place, your Honor.

We say that that conspiracy, as I have just described it, is the main thrust of the government's charges and that, standing alone, it is unlawful and that it needed no aggravation. However, we say that it was aggravated by an agreement entered into previously between Singer and Gegauf under which each undertook not to do anything in any country of the world which would have the effect of narrowing claims of the other.

The Court: So then I understand from your statement that it is the Government's contention that the first Gegauf-Singer licensing agreement was an act done in pursuance of the conspiracy.

Mr. Elkins: That is true, your Honor, and the facts, however—yes, that is true, your Honor.

The Court: All right. That is the answer to my question. The answer could have been yes. All right.

Mr. Elkins: We say, your Honor, that it was the beginning of the conspiracy, the format of the conspiracy as of April, 1956, and it is the beginnings of the conspiracy, and I am still merely trying to put it in its proper place. Some time [fol. 749] thereafter a representative of Singer proposed a letter to Mr. Gegauf, and this is sort of——

The Court: When you say that it was the beginning of the conspiracy, do you mean that that was when the conspiracy

had its inception, or do you mean that it was one of the initial acts done pursuant to a conspiracy?

Mr. Elkins: That is when one phase of the conspiracy got its conception, and then as time went on other terms were added to the conspiracy until we come to what we consider to be the main part of the conspiracy, namely the assignment by Gegauf to Singer of Gegauf's United States patent application.

The Court: Isn't the government's contention that this was a developing and ever enlarging, encompassing conspiracy or that from the very beginning Singer had this whole thing, this whole pattern, in mind with Gegauf and with Vigorelli, this pattern to exclude Japanese importation?

Mr. Elkins: As of the time of the Singer-Gegauf agreement of April, 1956, to which opposing counsel refers, it is true, according to the evidence, that Singer intended at that time to buy the United States patent applications of Gegauf. [fol. 750] That is so much for the thinking of Singer as of that time. Gegauf at that time had not learned of Singer's plans to buy the patent application.

The Court: But you are not answering my query. At the time that Singer acquired its license from Gegauf, is it your contention that Singer acquired it for the purpose of asserting it pursuant to a conspiracy with Gegauf and Vigorelli against Japanese importations into the United States?

Mr. Elkins: No, your Honor, not as of April, 1956. All that they acquired then was a license, and something that could not be asserted against anybody.

The Court: Suppose we put the question now. We will have the stenographer read the question again to you, slowly.

(Question read.)

Mr. Elkins: No, your Honor, there was nothing there that Singer obtained that it could assert. It obtained merely a license.

The Court: Is it your contention that at the time this first licensing agreement between Singer and Gegauf was entered into there then existed a conspiracy between Singer and Gegauf and Vigorelli to take steps to stop Japanese importations into the United States?

[fol. 751] Mr. Elkins: That is true as far as Singer and Gegauf——

The Court: What is true?

Mr. Elkins: That at the time of the cross-licensing agreement between Singer and Gegauf in which each party agreed not to do anything to narrow the claims of the patent applications of the other that it was agreed between Singer and Gegauf that the purpose of that provision whereby neither would limit the claims of the other was so that broad patents could result so that those broad patents could be used more effectively against Japanese competitors.

The Court: Was Vigorelli a party to this conspiracy at that time, according to the government's contentions?

Mr. Elkins: No, your Honor, not to all of those terms as I have expressed them. He was cooperating. He was a member of the conspiracy at that time to the extent that he was aiding and abetting the agreement between Singer and Gegauf.

The Court: Well, aiding and abetting is a term of art in law which indicates a consciousness of wrongdoing which makes him, in criminal law, a principal. When you say one aids and abets in the commission of a crime, you charge him [fol. 752] in substance with being an accomplice, and therefore under the law he is a principal.

Mr. Elkins: At that time, your Honor, April, 1956, as to the terms of the then existing conspiracy as I have described them, Vigorelli, it appears from the evidence, was not a party to it. It was strictly between Singer and Gegauf at that time.

The Court: I think I should state for the record that I have examined these exhibits at some length over the weekend and I have examined the stipulated facts and I am getting a distinct confirmation of the question which has grown from pre-trial that this was no act of conspiracy involving three or four individuals or three or four business concerns, that the negotiations which were had between Singer and Vigorelli were separate and distinct from those which were had by Gegauf, and both of them were separate and distinct from those which were had with Messerschmitt, and it was all independent action had by Singer to protect its product and its invention as best it could under the existing circumstances.

Mr. Elkins: It is true, your Honor, there would be no dispute as to the Singer negotiations with Vigorelli being distinct from any negotiations between Singer and Gegauf [fol. 753] up to a point in April, 1956. I believe it is safe to say that everything that has been covered by opposing counsel involving negotiations between Singer and Vigorelli was entirely distinct from any subsequent negotiations between Singer and Gegauf. It was in April, 1956, at the Milan conference just mentioned by opposing counsel, where Vigorelli was brought into the scheme of having Gegauf assign his United States patent applications to Singer for the purpose of grouping those patents in Singer together with others owned by Singer.

The Court: It was entirely what I would call a usual business condition, part of an arm-to-arm negotiation which was had between Singer and Gegauf, and I can find nothing from my examination of all of the exhibits which have been marked or from the stipulated facts which have been received in evidence which would support an inference of any three-party conspiracy whatsoever in this case. I make that observation to you as a result of my extended weekend study which was preceded by a study of the exhibits throughout the week.

All right. Go ahead.

Mr. Elkins: It is true, your Honor, that the Singer-Gegauf [fol. 754] negotiations, which, as I say, are the principal part of the government's case, were carried on from beginning, I think, in April, 1956, or shortly thereafter up to the actual assignment to Singer by Gegauf, and Vigorelli is in the picture only at the beginning, and the exhibits in question reflect that Singer, instead of going to Gegauf, went to Vigorelli, gave the idea to Vigorelli, we say, of the advantages to Vigorelli and to Gegauf of Singer having control of the patent situation, and Vigorelli's participation——

The Court: I think that is an unholy suspicion not supported by evidence. That is my present reaction to it.

Mr. Elkins: I have to disagree, your Honor.

The Court: That's right. I find no fault with your disagreeing with me as an advocate, even though you might have another reaction outside of your professional capacity.

Mr. Elkins: I have none, your Honor.

DISCUSSION OF SIGNIFICANCE OF EXHIBITS BY MR. PETTIT:

Your honor, I understand the government's difficulty and embarrassment, and I think there comes an end to the time when someone can continuously evade. This was tight-walked for five pages, from pages 504 to 508. The same [fol. 755] thing has been done through today, and there is a reason for it.

If he tries to claim that the agreement itself was part of the conspiracy, he is in the anomalous position of having a conspiracy going to acquire a patent from Gegauf to enforce it at a time when Gegauf didn't have the slightest idea that Singer was going to acquire, was interested in acquiring, at a time when there has not been one single comment about the purchase or acquisition of it, including Vigorelli, Gegauf or anybody else. He is, therefore, quite embarrassed at pinning himself down to the fact that he claims that there was a conspiracy to transfer a patent at a time when the principal conspirator didn't know about it.

[fol. 756] If, on the other hand, he excludes the Gegauf agreement itself, the license agreement, and starts thereafter, he very soon finds that Vigorelli just has nothing whatever to do with anything thereafter. You have a straight transaction between the owner of a patent and a licensee by which the licensee seeks to acquire the patent from the owner —situations, of course, in which there is a mutual interest, but reduced to those simple terms, this conspiracy becomes utterly and completely silly. It is only by trying to straddle all of them, get all positions into the picture, and not take a position, that he has anything that he can argue about whatever, because obviously he has to get Vigorelli into it—that there would be a transfer; and that is the only way he can get him in. He has to get Vigorelli into it to have a conspiracy —and, your Honor, he has evaded for eighteen months and many pages and he hasn't given you a frank answer yet.

The meeting of April 20, 1956, one week after the execution of the Gegauf-Singer cross-license agreement was held in Milan, as a result of a desire of Mr. Vigorelli who had made arrangements to see our people, Mr. Stanford and Mr. Waterman when they came through Milan to attend a fair.

[fol. 757] Government's Exhibit 27 says in the second paragraph:

> "What Mr. Vigorelli had on his mind was that now"—and I repeat the word "now"—"that Singer, Bernina and Vigorelli had arrived at certain agreements they should thereafter act in concert against others."

Now that is a statement which shows pretty well that even then there wasn't anything done in concert before. This is the situation to be taken advantage of now that the agreements had been made, and hereafter they should work in concert.

The memo goes on:

> "This, we very promptly said to Mr. Vigorelli, was out of the question, and he was advised that what appeared to us to be proper action was for each one to prosecute his own patents and take care of any cases of infringement that might appear. We stated that, certainly, this would be Singer's attitude with respect to the patents that it owned."

That seems to me to eliminate any thought of concerted action either before or after, and Vigorelli was promptly told so.

[fol. 758] On the next page it says:

> "Upon learning that there could be no joint action by the three companies who have been mentioned in prosecuting patents against all others in the field, that subject was dropped."

Now comes the paragraph that causes the government the most pain. It is the first full paragraph on the second page:

> "At this point, I should perhaps be mentioned that Mr. Stanford and I have discussed between ourselves whether we should say anything to Mr. Gegauf about our feeling that we could prosecute his patents that will be issued sometime within the next few months in the United States better than perhaps he could if we owned them, but we had decided not to say anything to Mr. Gegauf about this at this time."

This is, of course, the same attitude and the same point—is shown again by reference to Defendant's Exhibit 33, a letter written by Mr. Williams to Mr. Stanford, which, in the second paragraph says:

> "I would gather that you had great difficulty in com- [fol. 759] ing to an agreement with Gegauf and that there was no opportunity under the circumstances to discuss with them the possibility of having Singer purchase the U. S. Gegauf patent application."

I understand that Mr. Elkins, in his most recent statement, conceded that on the record there was no discussion of a possible purchase of Gegauf at any time prior to the execution of the cross-license agreement.

What Singer did was to take advantage of this meeting which Vigorelli had arranged, in the hopes that he could get some joint action, and when that was turned down, Singer used the occasion to try to get indirect word to Gegauf, because he had the philosophy that approaching directly might enhance Gegauf's position as to what he would demand. That is a normal technique. That is not mine. I think I would have written and said, "I would like to buy your patent"—but nevertheless there is a philosophy that it is always better to have somebody else approach the man. They used this opportunity to have someone speak to Gegauf on a very simple proposition, and since Singer could enforce its patent better than he could, and it was rather [fol. 760] obvious it would be to his advantage to sell it to Singer.

This memorandum says:

> "In talking with Mr. Vigorelli's lawyer, Mr. Stanford dropped this view to him"—and, as your Honor pointed out, "this view" is quite clearly the one expressed above, that Singer could prosecute the patent better than Gegauf.

Gegauf is three thousand miles away, a small company. Singer is here, a big company, with a big patent department, and quite able to take care of itself far beyond the possibilities of Gegauf. It therefore is just simply obvious as one of

the facts of life that Singer could prosecute the patent better than Gegauf.

It is also one of the facts of life that Gegauf, sitting in Switzerland, could well realize that without anybody saying anything more than that, it was Singer who was here and who wanted the patent.

> It says "and the question was raised if we would have any objection if they were to pass the word on to Mr. Gegauf that they were raising this point. We said that, of course, we would have no objection but that we ourselves did not wish to do this, and we would not want the suggestion coming to Mr. Gegauf at this time [fol. 761] as from us. If they wanted to suggest it, it was all right."

Further it says:

> "Mr. Stanford believes that he would be able before the patent is issued to rewrite the claims and make it stronger than it now is and that it is a fact that, being in the United States, we would be better able to prosecute any claims against this patent than would Mr. Gegauf."

This alleged conspirator was not even told the general terms of the agreement with Mr. Gegauf, as appears in the next-to-the-last paragraph—the alleged conspirator being Mr. Vigorelli.

It says:

> "Mr. Vigorelli was told"—I mean he was told in general but not specifically——
>
> "Mr. Vigorelli was told in very general terms of the agreement with Mr. Gegauf, except that we did not mention those very special ones that had to do with Singer's not building an exact one hundred per cent copy of the present Gegauf nor any of the other details except that neither party would act against the [fol. 762] other in connection with the particular patents or patent applications that were listed."

Now Mr. Vigorelli's condition is set forth in the next-to-the-last paragraph:

> "Following are some interesting sidelights that came out of the talks with Mr. Vigorelli. He now has no dealer in the United States."

Further down it says:

> "This, of course, leaves Mr. Vigorelli in quite a bad spot. He has already reduced his production considerably and has let a number of employees go."

Mr. Vigorelli, by the way, is a man who sent into the United States only a few machines—I think approximately 400 in one year and 485 in another, and absolutely nothing in 1959—all as appears in an exhibit that we have here.

Mr. Vigorelli's machines that this whole conspiracy is alleged to be about, which was to help Vigorelli—Singer was to spend not merely thousands but hundreds of thousands of dollars in a conspiracy that was for the benefit of Mr. Vigorelli.

Mr. Vigorelli imported 472 machines in 1957, and 400 in [fol. 763] 1958, and absolutely none in 1959—and he has even discontinued the manufacture of the machine.

And while at it, I might point out Gegauf's great interest in this market. He imported 1600 machines in 1957, the year that Singer bought the patent. Singer had sold 106,341 machines.

In 1958, Gegauf imported 3,405 machines and Singer sold 151,645.

In 1959, Gegauf imported 2,150 machines and Singer sold 156,445.

Now there are 450,000 machines almost in three years, compared to a trifling 800 by Vigorelli and a mere 6,000 or 7,000 by Gegauf. And yet they would have you believe that Singer put those people on a parity and agreed to protect them, and spent hundreds of thousands of dollars in their interest—not that Singer wanted a patent to own wholly and completely and use it as it saw fit to protect its own business.

The letter of Mr. Williams that I just referred to, Defendant's Exhibit 33, further states:

> "However, it has occurred to me that before leaving London you may have some further opportunity to correspond or converse with the Gegauf people and or their attorney. If such an opportunity did present itself, [fol. 764] it might be that you could in an offhand manner advise them that Singer might encounter some difficulty in cooperating fully with their U.S. attorney."

And on the next page he says:

> "Such information imparted to Gegauf might precipitate results which would be favorable to us."

Now Government's Exhibit 28, the government points out there that Mr. Stanford writes that Singer could best handle the patent situation, and from that he goes into quite an imaginative flight of fancy rather than the obvious thing that it did do—and it referred back, just as your Honor pointed out, to the previous situation.

This letter further states—and I do not think this was pointed out—"We wrote Gegauf today telling of the dual relation of his U. S. attorney."

And down below:

> "This suggestion, with the U. S. attorney situation is pressure in the right direction."

Now, your Honor, here we have a picture of Singer apparently conspiring to get two co-conspirators—this was, [fol. 765] according to them, a little backstage deal with Vigorelli, looking for a means of getting to a co-conspirator and talking to him about a conspiracy, and they had this pressure that Singer bears, to bring this about—and don't even mention it. The picture is quite clear that there was no conspiracy at a time when Singer had to find some way of getting an approach to him to even discuss the probability or the possibility of his transferring his patent application.

On June 11, 1956, two months after the license agreement had been signed, Mr. Waterman wrote—and this is Government's Exhibit 30—when he was in Milan and he had a con-

ference with Vigorelli and his attorneys—and this letter, by the way, was written to Mr. Baumann, Singer's agent. Mr. Waterman says:

> "During this conference, the idea was put forward, I believe, by Mr. Vigorelli's attorney, that it would be advantageous to all parties if Singer owned the Gegauf United States patent application No. 358,377."

It says:

> "It was thought that it would be best if the suggestion that Gegauf transfer his patent application to Singer come to Mr. Gegauf from Vigorelli or some other [fol. 766] source than Singer. It was left that Mr. Marcello Magnoni, Mr. Vigorelli's patent attorney, would write or otherwise convey to Mr. Gegauf's patent attorneys in Zurich the suggestion that the transfer be made, and, at the same time, set forth its advantages to all parties."

Now the government is not satisfied with the advantages that exist in licensees having a strong owner of a patent. They concoct I do not know how many other advantages with reference to a different patent, and I will call your attention to the fact that up to this time no mention has been made by Singer or anybody else of other patents. Up to this time they have been talking solely about the acquisition of the Gegauf patent, and the use of it by Singer because it could better enforce it.

Mr. Elkins said that this letter asked the representatives to find out what approach had been undertaken. It did not ask what approach had been undertaken. It asked a simple question, whether the particular question that was to be asked had been asked.

A conference was coming up and he wanted to know whether the suggestion was made that Gegauf transfer his [fol. 767] application because Singer wanted to know whether this suggestion had been made before they started talking with Gegauf in June.

On June 19th word was received as to what Magnoni said, and in dealing with this letter I want to call attention to the fact that I object to this letter as establishing anything sub-

stantive under the hearsay rule—and here is probably as extreme an example of the use of hearsay that is used as can possibly be imagined.

We are dealing with an Italian attorney, who, of course, speaks Italian, who in turn deals with a Swiss attorney, who in turn speaks either French or German——

The Court: Some of them speak Italian. Some of them speak all three, including English.

Mr. Pettit: —and they in turn were talking to Gegauf, who speaks only German. So the messages would go from the Italian-speaking Italian to the German- or French-speaking —in all probability—attorneys in Switzerland, to the German-speaking Gegauf, and back comes the message, then it is translated in our office.

[fol. 768] He states, that is, Mr. Magnoni states—and I would like to notice the heading of this letter "Subject: Interfering Patents Singer Gegauf Vigorelli"—that was not read by the government. It shows clearly that he was referring to Singer-Gegauf, and why he put in Vigorelli I do not know because there is not the slightest indication any place in the record that Vigorelli was involved in this in any respect. If you will forget Vigorelli for a moment, you will find that this letter fits in with the Singer-Gegauf situation:

> "With regard to the question of the advantage of the American Singer Company being in possession of the different patents which might be useful in defense of Singer Sewing machines with multiple cams, the writer has lately had the opportunity of talking to the Patent Attorneys of Mr. F. Gegauf on a number of occasions and the conversations have developed in such a way that the possibility and advantage that the Gegauf patent application in the States can be assigned to Singer could be considered in a definite way."

Now your Honor, that was not a reference to any and all patents that might be useful in the United States. By the [fol. 769] very headnote it was limited to the "Interfering Patents".

Now there were only two interfering patents that were being discussed by Singer, and that was Harris and Gegauf, and the only patent that we think they were talking of acquiring at this stage was the Gegauf application, and I would

like to call your Honor's attention at this point to the fact that we were dealing throughout this period, and all the way through to December, 1957, with a single application. Mr. Elkins never failed to say "applications", even though the letter following it uses the singular. Here and there a letter does refer to "applications", but this shows right thereafter that it meant "application", and it had been "application" because the simple fact was only one application was pending.

Mr. Elkins: Excuse me, Mr. Pettit, that document as just read by opposing counsel was not read quite accurately, and I do not suppose it makes much difference but it says "patents which might be useful in defense of sewing machine". I believe opposing counsel put the word "Singer" in before "sewing machines".

Mr. Pettit: I wouldn't say the contrary—that becomes such a habit—they are almost synonymous!

[fol. 770] What I would like to call attention to, your Honor, is on December 31, 1953, the United States Government Patent Examiner required Gegauf to make an election to ascertain that there were two separate ideas involved. This appears in one of the government's exhibits, 175, at pages 31 and 32—the last paragraph on page 31 and the first paragraph on the top of page 32.

On June 25, 1954, the attorney for Gegauf made a reply—elected one, and of course elected to keep in this one application the claim relating to the Gegauf mechanism of a stack of cams and a single follower, not the stack of cams with separate followers—and in doing so he protested that the ruling was not proper, but nevertheless proceeded. That will be found on pages 33 to 43, and specifically on page 41?

This, from that point on, remained an application covering the 401 Gegauf-Vigorelli type of mechanism, or, in other words, the stack of cams and a single follower.

Mr. Elkins: If your Honor please, I think that might be misleading.

Mr. Pettit: I did not interrupt you.

Mr. Elkins: This 401 machine is entirely distinct from the [fol. 771] Gegauf machine. They are different machines.

The Court: Suppose, Mr. Elkins, you make a little note of it——

Mr. Elkins: I am sorry.

The Court: It will be less disconcerting and less provocative to Mr. Pettit. It might be more practical, too.

Mr. Pettit: Now this is important, because the government is always talking about intent and attitude, and it is quite important to realize that all through these negotiations the intent and the attitude was that they were dealing with the Gegauf No. 1 patent application. The Gegauf No. 2 application came up a year later and under quite different circumstances—in fact, I will mention the circumstances that make this crystal clear that what I am saying is correct.

[fol. 772] At a meeting young Gegauf, Jr. became very excited. Government's Exhibit 62, page 6. This is a memorandum written by Mr. Stanford in December, 1957:

> "Young Mr. Gegauf became quite excited over the fact that Mr. Willie agreed with us that Singer did have full rights under both the original and divisional patent applications..."

He had before strenuously raised the point that the negotiations had been conducted on the basis of the material that was in conflict between Singer and Gegauf, namely, the stack of cams with the single follower. He claimed that Singer had no rights under the cross-license agreement with respect to the second idea contained in there and that they had all along been talking only in those terms.

This shows that it took the attorney for Mr. Gegauf to quiet him down and tell him that under the license agreement as drawn Singer had license rights under the second idea as well as under the first, but this, your Honor, comes in December of 1957 and I use it only to show that all during the period up to the time that they got into a dispute as to whether the license agreement covered the second idea in the patent all the discussions had been with respect to the [fol. 773] one mechanism.

I understand that this is October instead of December. I will straighten that out. My own memory was that it was October, and I was told it was the December conference. My memory is that it was October, 1957, but I will check which it was. In any event, it was late in 1957.

On September 3rd Gegauf wrote to Singer following Gegauf, Jr.'s conference with Singer here in New York in the summer of 1956. This letter is cited by the government

to show that there must have been some talk going on quite apart from Singer's desire to acquire the patent because it thought it could enforce it better. It does this because Gegauf writes back:

> "We agree that something should be done against Japanese competition in your country and maybe South America and are, therefore, looking forward to your reply."

No one knows what is meant by "South America." There is not any indication of any talk or discussion involved. Whether this is Mr. Gegauf's way of stating what he thinks ought to be done I don't think anybody can know. He certainly doesn't say that he agrees with Singer, and there [fol. 774] certainly is no indication that Singer made any agreement whatever about it. It is a rather ambiguous letter written by a man from Switzerland and I think does nothing to establish that any kind of an agreement was made. In fact, they merely talked about the fact that they wanted to acquire the patent and that they could enforce it better.

On September 7th a letter was written to Mr. Gegauf by Mr. Waterman. This is Government's Exhibit 35. The government points out that it says "We feel arrangement can be equally advantageous to both." But, when you are trying to set up a conference, talk with someone, I cannot see how you talk on any basis other than that whatever would come out of it would be advantageous to both. You certainly would not come out and say it would be advantageous to us but not to you or it would be less advantageous to you. This letter goes on to say:

> "Mr. Stanford does feel that if he has had the opportunity before we proceed to Europe this time, to know just what has been the patent action in Washington with respect to both your and our applications, he will be in a better position to discuss intelligently affairs of [fol. 775] mutual advantage to us, and to have prepared a draft which might be the basis for an agreement concerning our respective applications."

That agreement turned out to be the assignment that we are discussing.

The next letter is a letter of September 19, 1956, again reporting on what Magnoni has said. You will note that Magnoni had fulfilled any function that he possibly had back some months before. There had been no communications with him in the meantime. This was a quite voluntary letter, unsolicited in any respect, containing matters that were no part of what he had said that he would do. Here again we object to the use of this letter to prove any single fact in it by virtue of the circumstances that exist. One example of why we should not do so is the opening statement that Mr. Magnoni is reported to have made:

> "Mr. Gegauf is today effectively willing to transfer his patent application in the U.S. to Singer without regard or with little regard to the financial side of the matter."

Your Honor, the date of this is September 19, 1956. The conference with Mr. Gegauf that followed was just four days later. That was the conference at which Mr. Gegauf asked [fol. 776] a million dollars and finally, after conversation, came down to a quarter of a million dollars. That is the conference that broke up completely with no agreement. Here is Mr. Magnoni reporting four days before that Gegauf is willing to transfer his patent without regard or with little regard to the financial side of the matter. He further says, at the bottom of the page:

> "Mr. Gegauf is particularly and prevailingly interested to have a not objectionable patent in Germany, and for such end he made informally known to Mr. Vigorelli that the withdrawing of the Vigorelli application in the U.S. would be greatly appreciated, to prevent the issuance of a printed patent wherein the fact that the Van Tuyl patent exists will be made known to third parties. Informally, through Mr. Magnoni, Vigorelli agreed with the withdrawing of his U.S. application on condition that any other interested party (say, unnamedly, Singer) agrees too, and that another application (say, consequently, the Gegauf one) might be put

at disposal of said other interested party in lieu of the Vigorelli one, . . .''

Now, how much can be placed on that? How much con- [fol. 777] fidence can be placed on that? How much confidence is shown by the fact that Vigorelli had, more than nine months before, abandoned any claim that he had in his U.S. patent that related to the stack of cams and a single follower? He had no claim pending even in the United States. The only claim that he had left was with respect to taking information from two cams at the same time with a single follower. He had nothing whatever that would have interested Singer. Singer's Harris patent had Vigorelli beaten on the single follower. Singer's Johnson patent had Vigorelli beaten on taking information from two cams. And, as I say, Vigorelli had, already nine months before, to abandon his claim because he could not meet the suggestion of interference offered by the Patent Office.

How anyone could have thought that the Gegauf patent could take the place of the Vigorelli one, I don't know. That would mean a good patent taking the place of something that is utterly useless and that no one had ever discussed. No one had ever conceived of the ideas they might get. Vigorelli was simply beaten wholly and completely in the United States by Singer and obtained a license from Singer to sell his product in the United States so that Singer could [fol. 778] get a license to sell its product in foreign countries.

Mr. Magnoni, on the following page, says:

> "Mr. Magnoni pointed out that Vigorelli would consequently drop any direct means adapted to protect his machines in the U.S., . . .''

Mr. Vigorelli had no direct means to protect his machines in the United States. Then he says:

> "but he is quite sure that Singer will take care of the protection of the machines of the general type of interest, by making use of the owned Harris and Geganf patents.''

Well, that shows two things: first, it isn't a man speaking that has any agreement that Singer would take care of his

machines. Second, it shows pretty clearly that Magnoni was in fact talking about, and all along had been talking about, the Harris and the Gegauf patents, because it ends "by making use of the owned Harris and Gegauf patents."

I referred to the suggested interference that had been made to Vigorelli. This appears from Defendant's Exhibit 58 dated January 19, 1956. It sets forth a claim which was in fact taken from the Harris application, a claim which had been drawn by Singer. It says:

> "The following claim found allowable, is suggested [fol. 779] for the purpose of interference. Applicant submit same by February 24, 1956, under the provisions of Rule 203. In making this claim applicant is required to overcome the filing date (Rule 131) of the Harris patent, of record, which shows the construction set forth in the claim; failure to do so will be considered a disclaimer of the subject matter involved:"

Here is a plain statement that Vigorelli could get into interference if he could overcome the Harris filing date but that he had to overcome the Harris filing date. His attorney wrote to his patent attorney in Italy under date of January 23, 1956, Defendant's Exhibit 59; and February 6, 1956, Defendant's Exhibit 60. He points out in the fourth paragraph of the letter as follows:

> "The Examiner requires the inventor to overcome the filing date of the Harris patent. This patent was filed on June 9, 1952, that is prior to the filing date of the corresponding foreign applications which, according to the oath, were filed in Italy on January 28, 1953, and on September 29, 1953, and in Argentina on May 13, 1953."

This letter, of course, was referring to Vigorelli's filing [fol. 780] dates. Continuing:

> "Consequently, we cannot rely on the filing dates of the corresponding foreign applications, and the only way to overcome the filing date of the Harris patent is to prove that the invention, as set forth in the proposed claim, was introduced into the United States prior to

the filing date of the Harris patent, that is prior to June 9, 1952."

On the next page it continues:

"If you have proof of such prior introduction into the United States, which may have been in the form of a machine delivered to the United States, or any other disclosure in the United States, please inform me immediately by airmail of the facts involved, and I will prepare a suitable affidavit to the statements set forth in your reply and mail it to you so that the inventor may sign it.

Please note that such affidavit and an amendment submitting the proposed claim must be filed at the Patent Office before: February 24, 1956."

He supplements that advice by some rather interesting advice which I think is relevant to this whole case. He says he has further considered the contents of this letter of [fol. 781] January 23rd and that he wishes to inform Vigorelli that this matter seems to be much more serious with Vigorelli than he had realized at the beginning. He then states:

"The fact is that the question of whether we win the probable interference or not and obtain a patent is of negligible importance compared with the fact that if a patent is issued to a third party with the interference claim which the Examiner proposed, then Vigorelli will probably be barred—by such claim—from importing his machines to the U.S."

Your Honor, it is interesting to see these negotiators having just the same attitude but, of course, in reverse. Just as Singer's predominant worry was whether it was going to be barred, so, here, Vigorelli's attorney is writing to him and calling his attention to the fact that the great problem is the danger of being barred from selling his machines, a factor that controlled Singer from beginning to end in its own negotiations. The attorney continues:

"I have carefully gone over the interference claim and, after due consideration of the entire situation, my

opinion is that this claim clearly reads on the Vigorelli [fol. 782] machine as it is manufactured and sold at present, and that therefore issuance of a patent with this claim to a third party would be extremely dangerous to your clients' further business in the U.S."

Then on the next page he points out Mr. Vigorelli's rights in interference proceedings:

"Please note that if the present application were involved in interference proceedings with the other application, we would be entitled to prove—during such interference proceedings—the non-patentability of the interference claim. Although we might—by such procedure—at least partly 'cut our own throats,' still it might be worthwhile doing it if we could, thereby, eliminate the possibility of grant of a patent on the interfering application.

"However, in order to be able to do this, it would be absolutely necessary for the present application to be involved in an interference, and this is only possible under the conditions outlined in my letter of January 23, 1956—namely, if the inventor is entitled to allege, under oath, that he had at least disclosed to somebody [fol. 783] in the U.S. before June 9, 1952, the subject matter set forth in the proposed interference claim."

Now, of course, on the basis of that advice Mr. Vigorelli did nothing by February 24th for the simple reason that there was nothing that he could do. He was not even entitled to get into an interference because his priority date was not near enough to that of the Harris patent in order to let him get an interference with it.

We come now to the letter of October 9, 1956, which is Government's Exhibit 37, a letter to Dr. Lande by our Patent Department. It says:

"We conferred with Mr. Gegauf and quite an array of the top management of the Bernina Company relative to the Gegauf United States patent application, and found he placed great importance on the claims which he expected to obtain in the United States.

"In fact he wanted a million dollars for the applica-

tion. After a lengthy conversation he finally intimated that he would be willing to accept $250,000. As this sum was many times more than we would consider paying for this patent application we ended the negotiations [fol. 784] on a friendly basis."

Now, your Honor, that letter clearly means what it says, "we ended the negotiations," and they ended them for the very simple reason that the man was asking for $250,000, many times more than they were willing to pay.

Mr. Elkins, in speaking of this letter, says that the letter indicates there was a discussion between Singer and Vigorelli. I don't know whether that was a slip of the tongue and whether he meant Gegauf, but at least it says Vigorelli. That certainly is not a fact. I think that probably he intended to say Gegauf but he will have to speak for himself on that.

He further said:

"and that no agreement relative to the assignment of the Gegauf patent to Singer was made."

Well, that is a rather modest statement, to say that no agreement was made. The letter shows that no agreement could be made and that the negotiations were terminated.

He refers to a later letter saying that the parties agreed that they would defer any further negotiations until the patent proceeded in the United States Patent Office. Here is a letter written just about the time of the conference by a man [fol. 785] who attended it, and there is not the slightest indication in it of any postponement or deferment of anything, and when we come to a letter that he writes later you will find that the subsequent letter, when he wants again to try to take up negotiations with Mr. Gegauf, clearly indicates no such idea of a postponement of a discussion with respect to the purchase of the patent or, for that matter, a postponement of any other discussions.

The government marked as its exhibits Government's Exhibits 38, 39, 40, 41 and 42. It makes very little use of them, and I think you will see why. It does feel that it has

to say something about it, and it groups five of them together and reads out one little paragraph:

> "Our agreement provides that this interference is to be settled in accordance with the patent laws of the United States."

I would like to pay a little more attention to them. On October 22, 1956, Mr. Stanford wrote to Mr. Waterman:

> "Previous to our recent trip abroad the United States Patent Office declared an interference between our Carl Harris U.S. patent application and that of Fritz Gegauf. We have heard nothing from Gegauf or his U.S. attor- [fol. 786] neys concerning this interference since our recent trip."

The next paragraph commences:

> "You will recall that under our Singer-Gegauf agreement it is incumbent upon both parties to settle this interference in accordance with the patent laws of the United States."

Now, your Honor, this is the first of a series of these statements. This one, as you will note, was written to Mr. Waterman, the vice president of the Singer Company. You will find that the same statement is made in letters to Mr. Gegauf, in letters to Mr. Vigorelli, in letters to Mr. Gegauf's attorneys, in letters to Mr. Vigorelli's attorney, and, in fact, on almost every occasion that Singer has to write with reference to this it expresses this thought, that it is incumbent upon both parties to settle this interference in accordance with the patent laws of the United States. At the bottom of the page it says:

> "It may be that Gegauf will advise his United States attorneys to contact us for the purpose of settling the present interference, but on the other hand, Gegauf may extend to us another plan for disposing of his United [fol. 787] States patent rights. Enclosed is a draft of a letter which we propose to send to Gegauf. We shall take no further action in this matter until we have heard

from you as to whether you approve of this proposed action."

In his proposed letter, which is Government's Exhibit 39 addressed to Mr. Fritz Gegauf, it is stated:

> "As you know, the United States Patent Office has declared an interference between your United States patent application and Singer's patent application relating to ornamental stitch zigzag sewing machine. Such an interference is declared by the Patent Office to determine which of the conflicting applicants is to be awarded priority with respect to the subject matter common to the conflicting applications.
>
> "Our agreement provides that this interference is to be settled in accordance with the patent laws of the United States."

He goes on to show that the interference proceedings may be time consuming, may be costly. He says, "it would appear that it would be advantageous for us to settle the interference between ourselves rather than to continue the proceed- [fol. 788] ing and rely upon the United States Patent Office finally to award a priority."

He then says, and I quote: "On the other hand, it is most important that the interference be settled properly so that the prevailing party will ultimately be awarded a valid patent."

I don't see how it can be more clearly expressed that every concept that Singer had was that it reserved all rights and, of course, was bound to conduct any and every interference proceeding in accordance with the laws of the United States, and it expresses a thought that I gave the other day, that under no circumstances did it want a patent that was invalid. On the other hand, it says, it is most important that the interference be settled properly so that the prevailing party —not merely Singer—will ultimately be awarded a valid patent. That is not the language of someone who is looking for a way to slip something over on the Patent Office and to get an invalid patent with which to fight the gigantic cartel composed of the Japanese sewing machine industry.

The Court: Would this be an appropriate time now to take a recess for five minutes?

Mr. Pettit: Yes, your Honor.

[fol. 789] (Recess taken.)

Mr. Pettit: Your Honor, that letter continues. It says:

> "Perhaps if the United States Attorneys for both parties had a conference relative to this matter the exact procedure for terminating the interference could be readily and properly determined."

Pursuant to that advice a draft letter, a letter of such purport, was sent to Gegauf stating at the end that an interference had been declared, stating that "Our agreement provides that this interference is to be settled in accordance with the patent laws of the United States," containing the statement that "On the other hand, it is most important that the interference be settled properly so that the prevailing party will ultimately be awarded a valid patent." That letter is Government's Exhibit 41.

On September 19, 1957, Mr. Stanford wrote to Mr. Waterman, entitled "Gegauf United States patent.

> "Enclosed is a proposed letter to Mr. Gegauf. If you are in agreement with us that Gegauf should be approached again on this matter and approve of the letter in its present form, will you please send it on to [fol. 790] Mr. Gegauf.
>
> "It is our feeling that we have nothing to lose and much to gain by again seeking to obtain the rights in the Gegauf United States patent application."

Now, your Honor, there is no indication that anything had been postponed or that the whole conference had been deferred until a later date. This is a man who says: Having lost once before, do we have anything to lose by trying again?

Pursuant to that, the draft letter was enclosed which calls Gegauf's attention to the fact "that under the terms of our patent agreement the interference between your United States application No. 358,377 and our United States Harris Reissue application No. 516,059 has been settled."

That, as a matter of fact, had been settled some time

before, at a time when all negotiations with Gegauf were terminated and there was no thought or discussion, as far as anything in the record will indicate, of them being resumed. The letter continues:

> "We have now been notified by the United States Patent Office that our United States Harris application, which was filed some seven days after the filing of your [fol. 791] application, is ready to be issued as a patent. Furthermore, we anticipate within the near future to have issued to us several other United States patents relating to ornamental stitch sewing machine. We presume that in a short time a United States patent will be granted upon your application."

Now, your Honor, that paragraph, according to my reading, is nothing but an excuse to talk to Mr. Gegauf. It points out the fact that Singer has been notified that its Harris application is ready to be issued as a patent. It also expected other patents relating to the same matter. It was therefore logical for it to assume that the Gegauf patent would be issued at about the same time. It was using this fact as an excuse to get in touch with Gagauf and talk to him. The patents that it was expecting, of course, were patents that related to the 401 machine. It was also expecting the Perla and the United States applications which had not yet, I believe, ripened into a patent. Now it goes on to say in this proposed letter:

> [fol. 792] "You are no doubt aware that recently the many Japanese sewing machine manufacturers have brought out a large variety of ornamental stitch machines which would appear to come within the terms of claims which may be awarded in the United States with respect of the above Gegauf and Singer patents."

Then it says on the next page:

> "You may agree with us that under the terms of our present agreement neither party is in a position effectively to protect itself through patents in the United States with respect to this threatened competition, particularly when the competing machines are copies after both Bernina and Singer models."

With respect to the former paragraph, Mr. Elkins made a great point that it had been changed to read "infringing manufacturers" and drew many inferences from it. The inference that I draw from it is that the man was almost clairvoyant. He saw that he did not want to limit himself to dealing with Gegauf on the basis of the only rights that Singer would get, which would be to restrict a certain group, and you will remember that Gegauf himself tried to hold [fol. 793] out with respect to certain European manufacturers. It would have been a very bad beginning and a very bad approach to indicate in any way to Mr. Gegauf that Singer was interested in a half-ownership or a partial-ownership in this patent that it wanted to acquire from him. The change, I think, was made for the express purpose of having it go to Gegauf. Definitely and clearly it was Singer who was talking and was talking about infringing manufacturers, and I think it is just as well that he did because they had to bargain with him quite a good deal to get him to hold down the European manufacturers that he wanted to be able to license merely to Pfaff outside, of course, of Vigorelli who was entitled to the license in any event.

With respect to neither party being in a position effectively to protect itself through patents in the United States, that statement is just completely true. It is true by virtue of the fact that Gegauf was 3,000 miles away. He had none of the finances and none of the resources that would let him enforce his patent. Therefore he was in no position to effectively protect himself through his patent.

[fol. 794] Singer was in no position to protect itself for quite a different reason. The reason was that, with Gegauf getting the coverage of this stack of cams and the single follower in its patent, Singer would have nothing with which to [illegible] its rights. It would not have any patent that would in any respect be effective to protect its 401 machine against people bringing in the 401 multiple cam with the single follower. It could keep a second follower from being put on, but it could not stop the importation of multiple-cam machines with a follower to select any cam you wanted. Therefore it is perfectly correct to say that each of these parties was as of that time utterly helpless to protect itself, and I don't believe that anyone could imagine Gegauf conducting the proceedings that Singer is conducting and de-

fending itself as Singer is defending itself and continuing with the operation.

The letter that was written goes ahead as originally designed to point out that pursuant to the agreement the interference between the United States application of Gegauf and the United States Harris Reissue application was settled. It then puts in as a third paragraph the following:

> "When I had the pleasure of meeting you last fall [fol. 795] we had some discussion relative to the procedures that might be followed to enforce the patents referred to in the first paragraph of this letter . . ."

Now you will notice, your Honor, that was not a whole group of patents that could be of interest in enforcing various patents against competitors. That is a specific reference to the two patent applications. It goes ahead:

> ". . . when issued, against infringing manufacturers who primarily are manufacturers in other countries"——

It didn't say, your Honor, in another country. Japanese are only in one country. This says "who are manufacturers in other countries seeking markets in the United States, and more and more throughout the entire world."

He then goes ahead to repeat the sentence at the bottom: "I think you will agree with me that neither one of us alone can protect himself most effectively." Then comes the line that Mr. Elkins would use to completely negate everything that has been written by Mr. Stanford, even an item written at the time that it occurred. He says that this sentence [fol. 796] means that they had deferred action with respect to the possible purchase of the patent application. That he goes over time after time. This sentence says: "In our discussion we deferred any further action until the applications might have progressed further in the Patent Office."

But from the letter it is perfectly apparent that what they deferred discussing, if by chance they did in fact defer anything, was the method of enforcing the patents and the problems of enforcing their respective patents.

Mr. Elkins, if I understood him correctly, says they

couldn't possibly have been talking along that line because any agreement about enforcement of the patents would be illegal. So he says we couldn't have done that and then claims that we did something else instead that was even more illegal.

I don't think that an argument is feasible, based on the assumption that they could not have been talking about means of enforcing their respective patents. There is plenty of room for discussion between mutual licensees and cross-licensees of methods and procedures and steps that might be taken or should be taken with respect to enforcement without violating the law. There are, of course, agreements that [fol. 797] could be made that do violate the law, but no one can tell me that there is no range of conversation available for two cross-licensees as to the problems they have with people infringing their patents.

This is not standing alone; this same philosophy of discussing the problems of enforcing their respective patents runs throughout this material. There is no question whatever that unless this was just an excuse to talk to him, which it well may have been because there is no previous indication that they had reserved anything, it was purely a talk about means of enforcing their respective patents.

Now Government's Exhibit 45 is indeed bothersome to the Government.

[fol. 798] This letter, an answer by Mr. Gegauf to the previous letter, in it Mr. Gegauf says: "Thanking you for your letter of September 12th, I am pleased to reply by return of mail that I am looking forward to your visit in October for discussion either in Zurich or Steckborn regarding the mutual enforcement of our U. S. application No. 358,377 and the Harris Reissue against infringing products of the foreign manufacturers."

Now this, the "foreign manufacturers" has been a psychological imposition on Mr. Gegauf, according to the government. What it says is—"We would like to note your Honor that Mr. Waterman, due to his oblique references to the Japanese in the previous exhibit"—and by that he is referring to 'foreign manufacturers'—"now has Mr. Gegauf of Switzerland referring to the Japanese manufacturers as 'foreign manufacturers'. "Poor Mr. Gegauf. To take advantage of him that way.

He reads the letter that refers to "foreign manufacturers". He replies in terms, in talking about "mutual enforcement" against "foreign manufacturers," and the government doesn't have the slightest idea what he is talking about, they think that he is in a trance, under this oblique reference made by Mr. Waterman.

[fol. 799] Now I think he replied that way because Mr. Waterman had not made an oblique reference to the Japanese but because he had made a direct reference to "foreign manufacturers"—a reference that Mr. Gegauf could read and clearly understand, and he in turn wrote back in just those terms.

In that last letter Mr. Gegauf refers to "mutual enforcement". I do not think anybody can know what Mr. Gegauf meant by "mutual enforcement". There is no possible way of mutually enforcing the separate patents. I think it is a term that he probably uses to mean respective or—I don't know what, but clearly he could not have meant the word "mutual"—and Mr. Elkins says that if we did not accept that word, we should have replied. He says, with reference to the next letter, Government's Exhibit 46, dated September 25, 1957—his only point with respect to that letter is that if we did not think the "foreign manufacturers" meant the Japanese, and "mutual enforcement" did not mean mutual enforcement, we should have written back. I see no occasion to write back because of the most obvious use of the same term that we used so far as "foreign manufacturers" are concerned. I see no reason to write back because a foreigner used the term "mutual enforcement" with respect to the [fol. 800] patents that we are going to have a conference with him about anyway—problems of enforcing our respective patents—that is the very thing that Mr. Waterman wanted the conference about, he said, and I do not see why he needed to have any explaining beforehand.

On September 23, 1957, the patent department, Mr. Stanford, wrote a letter to Mr. Waterman—and the government says that so far as the government is concerned, it is not of any significance. This letter inclosed specimen documents of agreements—two proposed forms of agreement and one assignment. It shows exactly what Singer was thinking

about when it was on the way to the conference. This is what it says:

> "The enclosed specimen documents have been prepared for your use in the event that Gegauf should be willing to sell to Singer its above-identified United States application which forms the subject of the present license between Singer and Gegauf."

It goes on to say "Agreement (1) is suggested for use in the event that Gegauf should be willing to sell us the application for a single lump-sum payment."

[fol. 801] Agreement No. 1, your Honor, is Defendant's Exhibit 36 and is also marked S-8.

This agreement provides for an assignment and a license back. It has no agreement about licensing or not licensing, or enforcement against the Japanese or not enforcement against the Japanese. It is a simple assignment with a license back.

With reference to this, Mr. Stanford says:

> "This agreement has the advantage of providing Singer with an irrevocable title to the subject application and, furthermore, under this agreement it would not be incumbent upon Singer to deal any further with Gegauf in connection with this general subject."

That is the form of agreement that Singer strove for. That is the form of agreement that Singer got—one that would let it not have to deal with Gegauf any further on these matters.

On October 17th, Mr. Waterman wrote to Mr. Lightner, which is Government's Exhibit 49. The government states that the only significance is that the patent attorney referred to Kirker—and that negotiations in October 1957 have not been completed, and that Mr. Waterman is now in Zurich, in Switzerland, and he is going to Frankfort, [fol. 802] and that he will hear later on from Mr. Kirker.

The letter says:

> "Yesterday Mr. Stanford and I met with the Gegauf people and discussed from mid-morning until early evening the matter of the assignment of the Gegauf basic

U. S. patent on its automatic cam-block zigzag machine."

You will notice, your Honor, this is still talking about the patent or the assignment of the automatic cam-block zigzag machine.

"Such assignment like others that we have concluded will give Singer complete ownership of the patent (or as it is the case in this instance, patent application) and in return will license Gegauf to build and to sell his machines just as he is now doing."

I do not see why the government should attach great significance to this letter. Here is the patent attorney writing to the president of the company reporting what he is expecting to get, and he said it will give Singer complete ownership of the patent. No attorney in good faith—no negotiator can be reporting back to the president of the company that we are getting complete title if we have all [fol. 803] kinds of strings outstanding under the assignment. We do not have complete title if we cannot license or we cannot stop whomever we want to stop that is not specifically licensed. Yet here is the statement saying it is complete, and what it wanted and what it hoped to get.

He says that he tried to treat the subject matter as one that was not overly important to Singer but one that should be of equal value to both. He says "Naturally with the language barrier there is always some difficulty in bringing out all points, and it is not other than normal that there may be suspicion on the side of the smaller company to be allayed. I believe we were successful in doing this."

He mistakenly reports—at least he thinks he is reporting correctly but as it turned out it was not correct—that the price agreed upon was $40,000. He says, "There was considerable discussion in reaching this figure. It comprehends the outright purchase by Singer of their existing patent application with all its divisions."

So far as I know, this is the first reference to the fact that even the application had divisions—and this is October 17, 1957.

[fol. 804] "Their patent lawyer and ours are to get together shortly, and as it now stands, to proceed to

finalize the terms of the agreement in accordance with our discussion of yesterday."

Well, it turned out not to be that simple.

With reference to Mr. Kirker, who was Singer's counsel in Switzerland, and to whom the various forms of agreement that we wanted signed had been turned over, there is a telegram—Government's Exhibit 50 with a cablegram from Mr. Waterman to Mr. Stanford. He says:

"Kirker advises of latest three points put forward"—that means put forth by Gegauf—"first 125000 single or 25000 yearly latter for three years certain but believes half these figures might be accepted."

Your Honor, we are down a long way in a year and a half—we are down to $125,000 after an entire year's time, when he predicted within four days they were ready to give it for nothing. Well, at the end of the year it is down to $125,000.

"Second asks exceptions Pfaff, Vigorelli Necchi"—that means that he wanted to be able to license Pfaff, Vigorelli and Necchi.

[fol. 805] "Third wishes divisional claim not included as stated intends licensing this to some other interested European company."

Your Honor, we have now gotten to the point, October 17, and October 24, where they are first starting to *take* about the divisional application which ultimately turns out to be Gegauf patent No. 2.

The cable says:

"Advised Kirker to pass word to Willi without making any comment on first two that third will almost surely make agreement impossible as we all along were discussing application including divisions and possibility of changes."

Here is a statement, your Honor, giving as an excuse that we were all along discussing, when all along there had been no discussion whatever, and it is a typical kind of excuse that was being formulated at the time in order to

get Gegauf to go ahead and give this second application, because by this time they had already made their cross-license agreement with Messerschmitt—that is, Singer had; but they still give Gegauf no sensible reason as to why the division has to be included.

The Court: Would this be a convenient place to stop [fol. 805a] now?

Mr. Pettit: Yes, sir.

The Court: We will recess until a quarter after two.

(Recess until 2:15 o'clock p.m.)

[fol. 806] Afternoon Session

Mr. Pettit: Government's Exhibit 51 is a cable from Mr. Stanford to Mr. Waterman. This cable states:

> "Value of Gegauf patent to Singer greatly decreases when other people are licensed."

Now there are two things significant about that sentence, your Honor. One is the obvious mistake in asserting, that Singer was stating that it did not want to acquire a patent and have numerous licenses outstanding. Its value stated simply that it decreases with other people being licensed.

The second is that the other people being referred to were Europeans.

This was in direct response to a suggestion that Mr. Gegauf might have some Europeans that he wanted to license. Therefore it is perfectly clear that they were wanting the absence of licenses, and they wanted the absence of licenses to Europeans.

"However we understand Vigorelli is necessary licensee," the cable goes on to say.

That, of course, is a merely recognized fact because he [fol. 807] was already licensed by both parties, therefore he was a man that had to be protected by both parties. He had his license, and that is all there was to that.

The telegram then says:

> "Divisional claim must be included."

I call your attention to the fact once more than no reason is stated.

Government's Exhibit 53 is a letter dated October 30, 1957 from Mr. Stanford to Mr. Kirker——

I apparently skipped one, your Honor, and I will start with Government's Exhibit 52, which is a letter from Kirker to Mr. Stanford, dated October 25, 1957. This letter deals with the information that was conveyed by the telegram, and Mr. Stanford's reply. It says—and Mr. Elkins read this paragraph, I believe——

> "Gegauf filed some time ago a divisional application for a part of the subject matter of the above U. S. patent application"——

and I think it turned out that that was a mistake, but that is what he says.

> "The contemplated agreement must relate—according to Mr. Geogauf's point of view—to the basic [fol. 808] application only, in its present form. In other words, the divisional application will not be included in the agreement. We replied to Mr. Willi that certainly, such a condition will represent a serious obstacle to reaching an agreement."

He points out later that he had been in touch with Mr. Waterman, and it is perfectly apparent that he was calling for Mr. Waterman's instructions.

In one paragraph on that page he says:

> "We asked Mr. Willi why Mr. Gegauf wished to keep for himself the original application since, at another time, Mr. Willi said that Mr. Gegauf is not very interested in said invention as regards the U.S.A. Mr. Willi answered that certain European companies are highly interested in the divisional application and that Mr. Gegauf thinks he could sell said subject matter of the divisional application to them. We replied that this represents probably a supplemental difficulty for reaching an agreement with Singer."

The Court: On this Exhibit 52, at the top of the second page of that letter, the first sentence, what significance do you place on that?

Mr. Pettit: I attach this significance: that Mr. Gegauf

[fol. 809] was wanting to retain the right to license Europeans and his method of expressing it, and the way it was ultimately expressed in the agreement, was that Singer could not sue the European companies without Gegauf's previous consent.

In other words, a license in any event is merely an obligation not to pursue and not to exclude—that is all you do by giving a person a license. Gegauf was wanting the right to license the Europeans; he mentioned in one of these letters, you will find, where he talks about being able to license one out of a list of Europeans—I don't know whether that is in this letter or not, but this is part and parcel of Mr. Gegauf's philosophy that he was retaining power in himself to choose sub-licensees. It is not a license to the people named; it was a right in Gegauf to sub-license them by the process of preventing Singer from suing, and you will notice that there was to be no consultation, no question of agreement; that to the extent it was granted, it was absolutely in Gegauf.

It imposes no obligation to grant a sub-license to any European; no obligation not to grant it, and he can grant it when he wants, for how long he wants, or for such number of machines that he wants. He, by this proposal, when the [fol. 810] agreement is signed, is in absolute control of the persons he permits to bring machines into the United States.

He had suggested that in a rather broad manner. You will notice that he says—as the second point raised by Mr. Gegauf was "that he wished to be informed when Singer intends to introduce a legal action against a European company."

There was kept in Gegauf's hands complete control as to who in Europe could import. That is exactly the same thing that Singer fought against.

I have shown you several letters to that effect before, and I will show you how they continue to struggle against it, and how right here it is followed up with the statement "It would be better to set forth the condition in another form, viz: to include in the agreement the name of the companies which Mr. Gegauf has in mind, and to restrict said condition to such companies."

The Court: But the next exhibit, the letter, No. 53, shows

or indicates an acceptance of Singer to permit Necchi, Pfaff and Vigorelli to continue to import into the United States and not to charge them with infringement of Gegauf 1.

[fol. 811] Mr. Pettit: That's correct, your Honor.

The Court: What was the reason that prompted Singer to do that?

Mr. Pettit: That was a condition that Gegauf imposed in order to grant the assignment to Singer. Singer had no choice. Gegauf was in effect saying "One of the conditions that I impose upon you is that you give me this power."

Now Kirker had said to him, "Cut it down. Name the people you are talking about."

He said he thought it would be limited to Vigorelli, Necchi and Pfaff.

Mr. Stanford wrote back saying, "If it would be limited to Necchi, Pfaff and Vigorelli we would accept it" but as the contract was finally written, Necchi was eliminated, and as to Vigorelli it was inconsequential because he already had the license, whether it was included or not. So this in effect gave Gegauf the right to license Pfaff, and that is a result of the condition imposed by Gegauf.

You will remember that the cable said that Gegauf had raised three points, and what it meant was that he had demanded that the three things be included in the agreement, if he was going to sign the agreement.

[fol. 812] The first one was that the price would be $125,000.

The second one was that he would have the Europeans to license.

The third one was that—there was a third condition that he imposed—that the divisional application——

The Court: Would be retained by him.

Mr. Pettit: Yes—would be retained by him.

Now this letter is dealing with each of those three conditions that Gegauf is imposing.

You will see that Mr. Kirker says "Apparently (but it is not absolutely sure) there are only three companies involved."

At this stage it can be seen that Singer has as its objective in striving to get complete ownership of the patent that gives it the right to exclude to everybody, including

Europeans, and that it was striving to keep down every European from having the right to get this license.

How can you have a conspiracy on that basis? Here is Singer fighting and insisting on the right to bring its actions against Europeans as well as the Japanese, and quoting again from Mr. Lightner's memorandum just before this was signed:

> [fol. 813] "If we do have to pay such a price, it is very desirable to try to get some quid pro quo for the excessive price, and this may well lie in this matter of licenses to the unnamed European manufacturers. Accordingly, we should not only endeavor to ascertain who it is that might get a license, but try to get Gegauf to refuse to give these licenses, or if he finds himself unable to do so, then to try to limit the license to a modest number of machines."

And again from the same document Mr. Lightner says:

> "In determining whether to broach this idea in the course of negotiations, it must be remembered that getting control of the patent is the main objective, with the elimination or curtailment of European import as an important but secondary objective."

Mr. Kirker in his letter then went on to say that the point raised by Gegauf was that he wanted $125,000, that the payment was to be made once and for all.

In the last paragraph Mr. Kirker reports:

> "Since in the meantime we had reported the situation by telephone to Mr. Waterman at Frankfort, we [fol. 814] added that for Singer the problem was only to buy the whole thing, i.e., the subject matter of the original basic application in the U.S.A., with all possibilities of divisions and continuations, i.e., including the divisional application filed by Gegauf, and that there was no question of making two separate agreements and two separate payments."

I read that because of the opening line, "Since in the meantime we had reported the situation by telephone to Mr. Waterman."

Apparently there is a great effort to show that Mr. Kirker was a free-lance negotiator, conducting negotiations as he might see fit. All the evidence up to this time shows that he was given the form of contract, told exactly what he could sign. Any time there was a variation he was told what he could do.

I do not think there is anything in here which makes a great deal of difference but I would like the record to be kept straight; and every document as shown, and every document you will read, shows that Kirker was operating under explicit and definite instructions as to every point involved in the negotiations. The only freedom that Mr. Kirker was given in the entire negotiation was the free-
[fol. 815] dom to try to get a price of less than the maximum amount that he could pay fixed by Singer. There was not one single term in this contract, neither the form of the contract nor any substantive provision of it, that was in Mr. Kirker's power.

In Government's Exhibit 53, which is a letter from Mr. Stanford to Mr. Kirker, Mr. Stanford thanks Mr. Kirker for his letter of October 25th and then proceeds to tell him what he can and cannot do.

In the course of this he tried to get straightened out the various applications that have been filed. There is in the course of this correspondence a little confusion as to which is in fact the divisional application that covers the second Gegauf idea—and one would have a little difficulty in following through if he doesn't realize that there is a misunderstanding running through these letters—but that is all quite immaterial, I think, from both the government's standpoint and ours. The fact is that there was to be a divisional application covering the second Gegauf patent.

The letter says on page 2:

> "The second U.S. application No. 435,832 we believe relates to the idea of having two zigzag mechanisms,
> [fol. 816] one for fancy stitching and one for the usual zigzag stitching with means for shifting at the will of the operator from one mechanism to the other. If this is the 'divisional' application to which Mr. Gegauf refers, and we are now of the opinion that it is, then we are not interested in it and it is not necessary that it be included in the proposed agreement."

Your Honor, I call your attention to that because although they are under a misapprehension in stating that they thought that was the divisional application referred to, they stated quite definitely that any divisional application having these things in it they were not interested in—and that is quite a different attitude than the government is trying to present of grabbing every single application, every single patent than can be obtained if it relates in this field in any way.

Here was in fact a separate application of Gegauf's. It was not the divisional application that we are here talking about. It was an entirely different and separate application that had already been made, whereas a divisional application had not yet been made. But this does show that [fol. 817] even though it was for fancy stitching, and it has two zigzag mechanisms, one for fancy stitching and one for the usual zigzag stitching with means for shifting at the will of the operator from one mechanism to the other, Singer was saying, "If that is what he wanted to keep, we are not interested in it."

And then he went on to say:

> "We are, however, interested in acquiring ownership to the third unfiled U. S. patent application as it discloses and claims material taken from the original U. S. application No. 358,377, about which we have all along been negotiating. Without having this, the acquisition of the original application would be of only small value to us, if any."

Another statement unsupported by any reason, unsupported by any fact, but given because they could not give the real reasons as to why they wanted this application.

Now we have already pointed out in this letter that they have accepted Necchi and Pfaff in addition to Vigorelli. They do say "we would if necessary, agree to permit Necchi and Pfaff in addition to Vigorelli to continue to sell their [fol. 818] respective machines in the United States without fear of being charged with infringement of the claims which may be allowed as a result of U. S. patent application No. 358,377."

They said "if necessary," and that is what they meant. They had already pointed out that every single license granted diminished the value of the patent to them.

Now on the price, it says on page 3:—

"If you find it necessary, we authorize you to go as high as $75,000 for the outright sale to Singer.

Then it summarizes the instructions to Mr. Kirker.

"We suggest that you again contact Mr. Willi and make known to him our position in this matter, viz.:

"Singer will accept the U. S. patent application Serial No. 358,377 as it now stands, together with any divisional applications which may be carved directly therefrom.

"Singer will not ask that Gegauf's U. S. application No. 435,832 be included in the agreement.

[fol. 819] "Singer will agree to permit Necchi, Pfaff and Vigorelli to continue to sell their respective sewing machines in the United States as far as U. S. patent application No. 358,377 is concerned.

"Singer will pay $62,500 for the outright sale of patent application No. 358,377 by Gegauf to Singer. If necessary, you are authorized to offer $75,000 for the application."

Now your Honor, those were explicit instructions. Mr. Kirker operated within them and he had no authority outside of them, and he had even previously received the precise form of the assignment.

In an endeavor to overcome the obvious limitations of our Mr. Kirker, Mr. Elkins reads from Government's Exhibit 55, a letter of November 7, 1957 to Mr. Kirker in which it is stated:

"We trust that as a result of this meeting there will be prepared a written proposal which will be acceptable to both Gegauf and Singer."

Well, I do not see how that can be an alteration of his instructions. They, of course, hoped that he would be able to carry through with it and get a contract on that [fol. 820] basis that would be satisfactory.

By letter of November 18, 1957, Kirker to Stanford, which is Government's Exhibit 56, Kirker again sets forth

the matter or items relating to discussion with Mr. Gegauf.

He says at the bottom of the page:

> "From the beginning of the interview, we saw that the position of Gegauf as regards the contemplated agreement with Singer has been considerably altered since your visit in Zurich and even since our last telephone conversation with Mr. Willi."

If this man was a conspirator he was very hard to hold as a conspirator. Here is every evidence that they were dealing at arm's length; wanting his terms, demanding his terms, and getting some of them.

On page 2 it states:

> "Mr. Gegauf explained first that he has no objection against the idea of making an agreement with Singer, in order to stop as far as possible Japanese competitors on the U. S. market but he added that such an agreement might be reached under certain conditions only, which he pointed out as follows:"

[fol. 821] I think that the government tries to attach too much significance to Gegauf's statement that he has no objection against the idea of making an agreement with Singer in order to stop as far as possible Japanese competitors.

What he means is that he has no objection, at Singer's request and instigation to turn over to it a patent which it would use and enforce and in the course of which, of course, it would affect Japanese competitors, as they are the biggest importers—and I think it means nothing else; and while he recognizes that they have an interest in getting it, he has his own terms before he is willing to get from him a patent that Singer can enforce.

I think that is borne out by the conditions that he imposes throughout, and you will later see that his primary interest is Europe, not the United States. He says so almost quite frankly in either this letter or a later letter—I think it is this one. Also, as is pointed out in another document, that Gegauf is a comparatively small operator. He does not want to expand his place. He had an abiding fear that for a company of his kind to get too large, it would be running

into difficulties and dangers; he was satisfied with his com- [fol. 822] pany, he was satisfied with the size of it. His interest was in Europe, and I think both this letter and a later document that I will read will show it, when he was saying that he had no objection to making it so that Singer could do something—he was saying exactly that "Singer has asked for that but it is going to pay me the price I want if it is in a position to enforce the patent."

Now his first condition was:

> "The agreement must contain a clear undertaking from Singer, according to which Singer will not manufacture in the U.S.A. a device according to Gegauf's applications to be involved in the agreement."

Now I think that what Gegauf meant was this "slavish copy" business, because of course it would be ridiculous to sell a patent to Singer and then say that Singer could not make a machine under it. Singer already, as pointed out, had a right to make a machine and had a complete license on it, so on that basis it would be worse off in acquiring it than it would be before. I think this should be read in the light of the obvious situation of what Gegauf meant when he said that there would be a clear undertaking that we would not manufacture the device according to [fol. 823] the Gegauf application, similar to Gegauf's machine—"slavish copy" was the ultimate wording.

> "(b) Gegauf would retain the right to grant a license to a European company"—you will notice this is a little different angle; this is not the same as before—"Gegauf would retain the right to grant a license to a European company if such a company asks for a license for the invention object of the new application just about to be filed by Mr. Strauss (Mr. Gegauf explained that it is in this new application that the idea you are interested in is lying, and that it is precisely in said idea that it may be some European companies will be interested too. The solution on this point would be that the free license Singer grants to Bernina includes the right for Bernina to grant a sub-license to one European company belonging to a list of European companies to be defined)."

Now whether that means one at a time or whether you will get a whole list and you can only use it once, or whether you can have one in effect from time to time, as [fol. 824] long as it is someone, I don't know, but I also think it is not very material. The only point is to show that Gegauf was the one who wanted to preserve various rights to license Europeans

Then it goes on to say that Mr. Gegauf also asks for $125,000 for selling his application, and a new application to be filed.

You will notice it refers throughout here to "the new application to be filed," and it was so late in the filing, your Honor, that when the agreement was signed it referred to the original application and then it referred to "a divisional application which has been or is about to be filed."

It was so late in filing that when they signed the agreement they did not even know whether the divisional application had been made.

[fol. 825] This was sales talk. He believes that his machine was wonderful. He believes that his patent was very good. The government takes as law and as absolute fact that the valuation of its patent is fixed and determined beyond question, as being of great value—possibly a million dollars, possibly the 750 that was thrown in in order to give him advantages. Certainly it shows because the seller said so, that it was clearly worth $125,000.

You can get professional appraisers—you can put three or four on the stand and we won't take their word as final; but here it is absolutely final because the owner said so, in a bargaining session.

I think you cannot appraise the value of a patent by what a man says its value is at the moment he is trying to sell it—or really at the moment when someone else is trying to buy it.

There is a little sidelight on that at the bottom of page 2. It says "We"—meaning Mr. Kirker—"were somewhat embarrassed by such a declaration and by the affirmation of Mr. Gegauf according to which Mr. Willi was of the opinion that $125,000 was not sufficient. In fact, as we wrote before, Mr. Willi told us on the telephone some

[fol. 826] time ago that it was very likely that Mr. Gegauf would reduce considerably his request for $125,000 since he had put such a high amount in the discussion for counterbalancing Singer's offer of $40,000, which he considered as a minimum."

As to how good Mr. Kirker's estimate of this was, we can turn to one of his statements here later when he says he thinks "We can buy it for $80,000 or $90,000." In dealing with this price situation, showing his own limitations, Mr. Kirker writes:

"Owing to this change in the position, we felt it impossible to present as a firm offer a sum of $60,000 or $70,000, since we were not authorized to do so. We were prepared to start a bargaining discussion and Mr. Gegauf, Sr. warned us he was not willing to start such a discussion. He asked for a definitive offer (to be accepted or rejected but not discussed). We merely stated that due to such conditions, we saw no possibility to go further for the time being since our instructions from Singer contained a maximum and not a sum to be offered as an amount to be accepted or refused without discussion."

He considered his limitations to be so narrow that he was not even authorized to state the maximum price he [fol. 827] could pay because he had taken his instructions on the assumption that there was to be some bargaining, and, since Gegauf prohibited bargaining, he no longer had any authority to even let him talk to Gegauf about the price Singer would pay.

The government relies a great deal on the two paragraphs toward the bottom of page 3. I think that probably these two paragraphs are the cause of the dozens and dozens of references to the fact that Mr. Kirker participated in these conferences. They have cited every single reference to him including one that he would be available, that he attended the conference, or any other fact that in any way relates to him, although it shows absolutely nothing about his authority. They have cited them all. And I think the time spent on it was to try to say that Singer was saying what was said here. I don't think the

conclusion is very good, but I also don't think that what was said here amounts to very much. It says:

> "During the discussion, we pointed out that it was not right to compare what Bernina could get for a license to what Singer would pay for being in a better position for acting against common competitors."

[fol. 828] Well, I think that is rather common sense. Singer already had a license, and I never heard of anyone paying a colossal sum for the mere privilege of spending more moneys to enforce it. Generaly the value of a patent is measured by what it is worth to you to manufacture under it. Singer already had it, and I think the suggestion that Singer should not pay for acquiring a patent under which it was licensed an amount that it would pay if it had not been licensed is just simply common sense.

> "We presented the view that what Singer was prepared to pay is to be considered as an insurance premium for bettering its legal position, and not as the equivalent of a license."

Clearly it was not the equivalent of a license because it already had it. What is meant by "insurance premium" I don't know. That is anybody's guess, and Mr. Elkins lets his fancy roam. I know that it was for bettering its legal position because when it got the patent its legal position was that it could sue on it, and without having the patent its legal position was that it could not sue on it. If he wants to call it an insurance premium without defining what it means, I don't know whether there is any better word for [fol. 829] it or not It was a rather novel situation of a company buying a patent under which it was already licensed because it wanted to enforce it. Now this goes on:

> "To this remark, Mr. Gegauf replied that we were right but that by giving Singer the possibility to stop"——

notice, your Honor, those words, "the possibility to stop"——

> "the Japanese competitors in the U.S.A., there is a serious drawback for Bernina,"——

and this comes back to what Bernina's real interest is, at home in Europe——

> "namely, if Japanese competitors can no longer sell their machines in the U.S.A., they will try to sell them in Europe."
>
> Well, it seems to me that that is just a conclusion that anyone with a little bit of common sense would come to. It is, again, one of these facts of life that exists, and he points it out. It is certainly true that, if we succeed in stopping the Japanese along with Europeans or alone, there is no question but that the Japanese and the Europeans would turn more and more to other markets because they will have to, or else they [fol. 830] will have to manufacture non-infringing machines. This letter goes on to say:
>
> "We answered that if Bernina's patents in America permit Singer to stop the Japanese competitors, the corresponding European patents will permit to act exactly in the same way in Europe. But Mr. Willi and Mr. Gegauf Sr. confessed that unfortunately the position was not so good in Europe."

Now, your Honor, this meant that we had entered into a license with them under which they license us under their European patents. We had assumed that they were good, that they would maintain them, that they would keep them up. I think it is a normal answer for Kirker to say that "Your patents will protect you." This letter concludes with the statement:

> "In any case, it shows that the position of Mr. Gegauf is firm and that he will not make new substantial concessions."

I don't know whether this conspiracy was formed yet. If it was not, it certainly is hard in the making; and if it was, it is hard in carrying out. I don't know which his position is even to this moment.

We come then to the memorandum of November 27th [fol. 831] from Mr. Lightner, and this I consider very important. It was shown to the various officers in the company. It was drafted for the express purpose of giving

it to Mr. Stanford as a guide for him in going to Europe and trying to finally settle this matter. His opening paragraph is:

> "The main purpose of Mr. Stanford's trip will be to obtain such control of the Gegauf patent applications in the United States as will put us in a position to own and control it in order to get the very best patents and bar import or U.S. production of mechanisms which would violate these patents."

The government makes much point of that, that we would enforce the patent against manufacturers as against sellers. I cannot quite understand what in the world the point is because, clearly, if we had a right to get it and had a right to enforce it, we had a right to enforce it against infringing manufacturers as well as infringing sellers. I cannot see that it adds anything to this picture at all except to point out how complete Singer expected its title and ownership of the patents to be. Mr. Lightner states at the bottom of the page:

> [fol. 832] "Evidently, Gegauf has stiffened on price and we may have to pay as much as about three times the original figure. While this may seem high, yet over the years ahead the payment of such a price may well be justified by our having the ability to stop import of very low priced multi-cam machines, not only as a result of the help that we would have in the U.S. market in preventing such import, but also because inability to enter the U.S. market may discourage some people from entering the field and raise unit costs in the case of those who do produce such machines for other markets."

Here again, your Honor, is the statement that we would use the patent. Certainly, if this acquisition is needed and its use is legal, there is no reason in the world why we cannot hope for all the incidental benefits that come from using it to stop infringements, and whether those incidental benefits come abroad or in the United States is quite immaterial. The question is: do they have a right to get and

enforce the patent? The incidental benefits flowing around the world are certainly not material to this action.

On page 3 he says:

> [fol. 833] "If Bernina is to continue to have the right to send machines into the United States and if they consider that right important, they may very well see the wisdom of enabling us to stop other imports from Europe as well as those from Japan."

In other words, in your arguments with him, in your attempts to limit as far as possible the licensing of other Europeans, show him the wisdom of enabling us to stop imports from Europe. And then finally he concludes with what I think is the most significant statement and also the most conclusive statement that is found any place in any document. Having referred to the possibility of inducing agreement by taking some machines from Gegauf, he says, and this is practically in conclusion:

> "In determining whether to broach this idea in the course of negotiations, it must be remembered that getting control of the patent is the main objective, with the elimination or curtailment of European import as an important but secondary objective. . . ."

Now, your Honor, as I said before, the dictionary defines "secondary" as being that which is second in im[fol. 834] portance to that which is first in importance.

As a result of the mission undertaken by Mr. Stanford, upon these express instructions he obtained the assignment which is Government's Exhibit 58. It will be noted that Singer paid the $90,000 and granted back to Gegauf a non-exclusive, royalty-free license to sell in the United States sewing machines of the type disclosed in said United States patent application and made in their own factory in Switzerland.

> "(3) Singer hereby agrees not to introduce, without the consent of Gegauf, legal proceedings on the basis of the said patents against Pfaff in Germany or Vigorelli in Italy, but only"—

and I think this should be noticed——

> "as far as sewing machines manufactured in Pfaff's factory in Kaiserslautern (German) or in Vigorelli's factory in Italy are concerned."

In other words, even the license granted here was the license only to let in machines manufactured by a specific manufacturer in a specific plant. Pfaff couldn't even manufacture these machines in some other plant and import them into the United States, nor could Vigorelli.

And finally Singer made its agreement; that bothers [fol. 835] Mr. Weinstein so much; that they would not make a slavish copy of the construction of the machine or the mechanism. That, your Honor, is the assignment from Mr. Gegauf to Singer. There is the shorter form for the purpose of filing which consists of Government's Exhibit 59.

Government's Exhibit 60, a letter of December 6, 1957, to Mr. Waterman from Mr. Stanford, throws some light on this matter. This letter must be from the Patent Department and not from Mr. Stanford:

> "We anticipate receiving from Mr. Stanford this afternoon the assignment document which transfers title in the above-noted United States Gegauf application from Gegauf to Singer.
>
> "As you know, it is imperative for us immediately to exercise control over this application, thereby to insure that it will not issue as a patent before we have had an opportunity to place it in a condition which will meet our particular needs."

This was not Gegauf's; this was not Vigorelli's. This was Singer's particular needs.

Government's Exhibit 62 is a memorandum by Mr. Stanford with reference to the negotiations for and acquisition [fol. 836] of the assignment. This shows in the second paragraph that Mr. Stanford was going to Mr. Kirker's office and questioned him minutely about everything that had occurred during the recent negotiations. It also shows that it was concluded that the best way to handle the matter

was to call Mr. Willi, patent counsel for Bernina, and see if they could get together.

Over on page 3 at the bottom of the page the government reads the memorandum, reads the portion which says.

> "Rather than approach Mr. Gegauf as a humble petitioner with hat in hand, I immediately seized upon a statement made to Mr. Kirker, at a previous conference, to the effect that the Japanese ornamental stitch machines would be sent into Europe if they were stopped from being sent into the United States because Bernina did not have broad patent protection in Europe. I intimated that this was a surprise to us for we expected Bernina to have patents in Italy, Germany and Switzerland which would fully protect Bernina and Singer, and that it was very difficult for us to appreciate that it was only in the United States that they [fol. 837] expected to obtain any substantial patent protection. I continued to drive this point home and asked if they knew of any publications, facts or machines of which we had no knowledge."

Now, your Honor, there is the tipoff as to what he was talking about. He at this point became worried as to whether they could possibly know anything about any publication, machine or anything else that would affect these patents. He knew of none and he had made a pretty complete search on it, and this whole statement was made in an effort to drive out from them any information they might have that would reflect in any way upon the patentability of the 401 machine, the patentability of the idea contained in the Gegauf application.

Says Mr. Stanford:

> "I then asked them such questions as:
>
> "Why no action had been taken in Italy in reference to their Italian patent;
>
> "What set of circumstances caused them to abandon much of the protection that they should have been able to obtain in Switzerland; and
>
> "Whether or not their patent application which had

been published for opposition in Germany was being [fol. 838] opposed by a third party."

All of that was designed to unearth whether there was any reason in back of these various actions.

"I was informed that they knew of no additional reference publication or prior patents which would have any effect upon the patents,"

says Mr. Stanford after setting forth the questions that he asked. It is perfectly obvious what Mr. Stanford was getting at and what he wanted to know. And, if they had any weakness that he didn't know anything about, he wanted to know it. That's what he meant by saying that he understood or he assumed they would have protection in these various places.

Certainly he had never heard a word that indicated there was any question whatever about the validity of the Gegauf patent in Switzerland or its enforceability. He had certain ideas about the patents in Italy, as he does about all patents in Italy, but he knew nothing that would indicate that the patentability of this idea was not feasible.

I read this morning the significant paragraph from page 6 dealing with young Gegauf and his excitement at the idea that we thought we had a right to make machines or do anything we wanted to under the second application. He [fol. 839] was insisting that that had not been involved, that all the parties had been dealing about was the matter as to which there was an interference, where there was a common subject matter and the claims conflicted, and he said that that was so much so that in the face of the license as it read, which would clearly give Singer a license, he was saying that was not the intention and that was not what the bargaining had been about, and it took his counsel to calm him down.

The government read further:

"Young Mr. Gegauf further argued that if the United States patent were assigned to Singer and if Singer was successful in stopping certain types of Japanese ornamental stitch machines from being shipped into the United States, it would merely divert such ma-

chines into Europe and as a consequence Bernina would have still more competition in Europe, and as a result of the increase in competition in Europe Bernina would have a substantial loss of business."

I don't know what would show more clearly where Bernina's interest was and its danger in having Singer acquire the patent and use it, as it had every reason to [fol. 840] believe that Singer would use it, to stop all imports.

The Court: I think this is a good time to take a little recess.

(Recess taken.)

Mr. Pettit: Still referring to this memorandum from Mr. Stanford with reference to the conference, on page 14 there is this paragraph:

"Bernina does not wish to increase its production. Mr. Gegauf said that they are getting the maximum number of machines off their present tools and that he does not wish to expand any further. He expressed the opinion that small sewing machine companies get into difficulty by over-expansion and permitting their inventories to become too great."

Again one more indication of where his interest was.

Government's Exhibit 63 was a Christmas greeting, your Honor. It says, "... I am writing this letter instead of dispatching to you the usual Christmas card."

The Court: It wasn't very gracious, was it?

Mr. Pettit: No, it wasn't, but he went along and ex- [fol. 841] pressed a lot of nice ideas, one of which Mr. Elkins thinks is extremely strange. Of course, he is not only sending him a Christmas card. He is saying that he liked the chocolate and the bottles of Kirchwasser, in general a chit-chat letter in lieu of a Christmas card, and he ends up:

"It is a pleasure to do business with you and I am happy that our recent business dealings reached such an amicable conclusion. I hope the result will be profitable to both parties."

Now, there is the foundation of the government's charge of conspiracy. That one has more importance in it, I think, than almost any of the other documents have shown.

In the annual report for 1957, that is, the annual report of the Singer Patent Department, it says:

> "Steps were taken to strengthen Singer's patent position in the United States for multiple cam zigzag stitching machines by concluding an agreement with Fritz Gegauf A.G. of Switzerland, makers of the well known Bernina sewing machine, whereby a basic United States patent application relating to such machines was assigned to Singer. Patents issuing on this ap- [fol. 842] plication grouped with other Company patents should put Singer in a better position in any attempt to prevent others from importing into the United States multiple cam machines of the Singer Class 401 type."

Now, your Honor, when it says "patents issuing on this application grouped with other Company patents," it is quite obvious we are referring to the other company patents on the 401 machine. There are, as I have told you, several ideas, several inventions in the 401 machine. The 401 machine carries a label referring to all the patents that cover it, giving notice of any possible infringement of these patents.

I will offer, along with several other of the documents that will come in, just a copy of the label that appeared on the machine at the time it was the only one of this family being made. There are larger numbers on it now because they have produced the 403 machine and the 404 machine and they have enlarged the label to cover patents that cover those machines. But at this time, when it was originally made, it carried this label referring to the various patents, and I would like to offer it to your Honor and we will have it marked in evidence.

The Court: This is on the Gegauf importation?

[fol. 843] Mr. Pettit: That is on the Gegauf machine. That is the label carried on the Gegauf machine—I mean the 401 machine made under the Gegauf patent. That is the label that Singer carries or did carry on its Singer 401 machine.

(Received in evidence as Defendant's Exhibit 119.)

The Court: What is this, a label giving patent notice?

Mr. Pettit: That is a patent notice, and I am relating this to this statement in the annual report, your Honor, about patents issuing on this application grouped with other company patents. Of course, there were other company patents. The other company patents covering this 401 machine were listed right on the label that is placed upon the 401 machine. There is no implication here at all that the Patent Department was talking about other patents, other multi-cam patents. These patents I might point out relate to things other than about the cam. There are many features in there that will relate to any machine, whether it is straight stitch or replaceable or multi-cam, but it is perfectly correct to say that Singer could protect [fol. 844] this 401 type machine with the Gegauf patent and its other patents covering the machine.

Mr. Elkins: We object to it, your Honor, unless it comes in through the testimony of some qualified witness. We don't know what it is.

• • • • • • •

[fol. 845] Mr. Pettit: If the government will not accept it, that that notice rode on the 401 machine, I will prove it.

The Court: We will take it now subject to such proof. If the proof is not submitted and you deem it important, you may move, Mr. Elkins, to strike it from the record. It seems to me that it is all tabulated here anyway on this exhibit in evidence. All right.

[fol. 846] Mr. Pettit: I would like to read portions of Defendant's Exhibit 34 which is a letter of February 11, 1957, to Mr. Gebhardt, manager of the plant in Karlsruhe, Germany, from the Patent Department. This letter is in response to a request as to whether Karlsruhe should proceed with oppositions against Gegauf. The letter says:

> "We have received your letter of February 4, 1957, and in response thereto we have this day sent you a cablegram which reads as follows:
>
> " 'Your protest against Gegauf patent G15628 would not embarrass Singer and would appear to be advisable.' "

"We agree with you that since Gegauf will not discuss their German patent application No. G15,628 and your Gebrauchsmuster No. 1,729,923 you have little recourse but to protest the Gegauf patent application. Such a protest will not embarrass Singer as Singer and Gegauf are direct competitors and the recent Singer-Gegauf agreement relating to specific zigzag sewing machine patents does not affect our normal competitive relationship."

That, your Honor, is just to show the attitude of Singer, what it felt with respect to Gegauf on February 11, 1957, [fol. 847] that they had been engaged in negotiations with them, had already had the cross-license, and were later to engage in negotiations again with respect to the acquisition of their U. S. application.

Your Honor, I wonder if I could just have five minutes to organize just two or three of these documents.

The Court: All right. Tell me when you are ready. We will take a five-minute recess.

(Recess taken.)

[fol. 848] Mr. Pettit: Your Honor, at this time I would like to take up some side issues as they have been thrown into this case by the government. One of them relates to the implication—and a quite erroneous implication—that Singer was just waiting for the Tariff Commission proceeding to end before deciding to license Europeans. Mr. Weinstein said that Singer did not introduce the respondent's machine in the Tariff action, as mentioned in the letter that he was reading from. He says, as mentioned in this letter, that if Husqvarna did not oppose Singer, Singer would not oppose Husqvarna.

I do not know whether that is entirely so, because it leaves the implication that if we signed this, and we did not put in the machine, Husqvarna would not oppose us. The fact of the matter is that Singer did not put in the machine, as you can see from the record, but what you cannot see from the record is that Singer did not have any such machine. That is beside the point. He did not read that. Husqvarna did oppose us and was one of the most bitter opponents that we had in the Tariff Commis-

sion proceeding, and one of the most pestiferous, and I would like to offer in evidence from the Tariff Commission proceedings, Vol, I, pages 55 to 58; pages 65 to 67; from [fol. 849] Vol. II, pages 181 to 182, and page 317; from Vol. III, pages 372 to 375; Vol. IV, page 510, page 618 to page 628.

The Court: What is the purpose of these offers? Why do we want to get into this matter at all?

Mr. Pettit: I would not have gotten into it, your Honor, except as a result of the government getting into it. The government has tried to convince the court that Singer really did not bring a Tariff Commission action at all. It brought an action that was directed against the Japanese only—in the meantime concealing from the Tariff Commission that they were freely willing to license the Europeans and that they were just waiting to make those licenses—all in an attempt to convince this court that a Tariff Commission proceeding, which has to be against everybody or nobody at all, wasn't in fact a proper Tariff Commission proceeding. And it does this in the face of the fact, for instance, that the record clearly discloses that we did not make any arrangement by which they would not oppose us. They did oppose us. And, second, the very idea is just simply assinine and distorted, because it is well known that in a Tariff Commission proceeding, one of the principal facts that they want to know is: Are you [fol. 850] trying to use us as a royalty enforcement agency?

To get into the Tariff Commission you must be protecting an American industry. Once a protected American industry, if you are granting licenses all the time and are coming in against some non-royalty-paying infringers who merely want to use this as a method of stopping them and collecting royalties, it is so much so that even the existence of a single license creates great danger of failure in the Tariff Commission proceeding. That was brought out in the proceeding. Every license that was outstanding, including the Sears, was noted, as was the right of Gegauf to grant licenses to Pfaff and Vigorelli.

Now they implied that if we would just be sly and slick with the Tariff Commission and be quiet, we could then start issuing licenses.

Your Honor, the Tariff Commission watches the situation at all times. There is no way in the world that any licensee can import his machines into the United States after there has been an order of exclusion of infringing machines except by the process of the owner of the patent notifying every customs officer in the United States that [fol. 851] it must hereafter let this machine in because there is a license.

Now how long do they think that Singer could keep an order like that in effect that is based on the fact that there aren't licenses, when it starts granting licenses and notifying all customers officers to let them in? The victory it had won before the Tariff Commission would be lost so fast they would not know what happened to them, and therefore the very concept, the very concept that Singer was waiting to make licenses is just silly. They might as well have dropped the Tariff Commission proceeding because the minute you start granting licenses, the Tariff Commission order would be rescinded.

The Court: You offer this portion of the record before the Tariff Commission in evidence to show that there was opposition by this Swedish company?

Mr. Pettit: That's right, but Mr. Weinstein——

The Court: Is there any objection to it being received in evidence for that purpose?

Mr. Elkins: In the first place, we have not seen it, your Honor, that is, we have not reviewed it in relation to the citations given by opposing counsel. We are acquainted with the transcript, but not particularly with the parts [fol. 852] to which he refers.

The Court: I will receive them in evidence subject to a motion by you to strike after you have examined them.

Mr. Pettit: Your Honor, although there are several volumes and thousands of pages, they know that the Husqvarna machine was not introduced. That is how familiar they are with the record.

Mr. Elkins: We are not now, as we stand here, familiar with those parts as quoted by opposing counsel.

The Court: I will receive it, and if for any reason you feel it should not remain in the record after you have examined it, you make a motion to strike.

Mr. Elkins: And while I am on my feet, your Honor, in relation to the statement made by opposing counsel as to the manner in which the Tariff Commission operates under an order, which might come from the President of the United States, I do not know whether he is asking the court to take judicial notice——

The Court: Yes. I am familiar with the Tariff Commission regulations.

Mr. Elkins: I might ask for your benefit for him to cite them, your Honor.

The Court: Well, I have already looked them up, not [fol. 853] for my benefit, but if you want them cited for your benefit I think he will be happy to do that.

Mr. Pettit: Yes.

The Court: Mr. Pettit, will you give Mr. Elkins the regulation numbers that govern these matters so that he can get them out of the Register?

You see, I had them in a case of somebody copying a Japanese machine a couple of years ago—the Japanese brought a complaint.

Mr. Elkins: If they had not been offered by opposing counsel—if his description had not been offered by them, I would request that the court accept it and give it judicial notice—otherwise may we ask that his interpretation be stricken.

The Court: No, I am taking notice of the Tariff Commission regulations which govern their procedure.

Mr. Elkins: And in relation to any description by opposing counsel, may we ask that that be stricken since it is not going to serve any purpose.

The Court: If it does not conform with what I ascertain to be the facts, I will disregard it.

The extracts from the transcript are received in evidence.

Do you have copies of that for Mr. Elkins—you have [fol. 854] them do you?

Mr. Elkins: Yes, we do, your Honor.

The Court: All right. You look them over and at your leisure if you care to make a motion to strike, you may do so.

They are now received in evidence.

The Clerk: Vol. I is Defendant's Exhibit 120; Vol. II is Exhibit 121; Vol. III is 122, and Vol. IV is Exhibit 123.

(Received in evidence as Defendant's Exhibits 120 through 123 inclusive.)

Mr. Pettit: As your Honor pointed out, this correspondence between Husqvarna and Singer is the normal correspondence by a company that does not want to cause unnecessary antagonism by someone who can be and normally would be a potential customer.

The same thing is true with reference to Phoenix, which they mention as coming to Singer, and indicate that a similar arrangement was made.

On March 20, 1959, Mr. Stanford wrote a letter to Mr. Kircher in reference to the Phoenix matter—and this is Government's Exhibit 118. A representative of Phoenix had asserted that there was some form of agreement between Gegauf and Phoenix that gave Phoenix some [fol. 855] rights. This letter to Mr. Kircher says:

> "If there is a written agreement between Mr. Gegauf and Phoenix concerning the United States patent application which issued into the United States patent now before the Tariff Commission, Mr. Gegauf failed to advise me concerning the same. I am sure that Mr. Gegauf would have reserved rights in the United States patent application for the firm Phoenix, as he did for Vigorelli, if such is the case. I have examined the papers filed with the Tariff Commission on behalf of Phoenix and it is interesting to note that they do not allege or mention that Phoenix has any rights under the Gegauf patent."

Then in the next-to-the-last paragraph it says:

> "As you know, at this time we are not in a position to consider a direct settlement of the question of infringement of our Gegauf United States patent by Phoenix and to grant it a license thereunder. Also, it would seem unwise at this time to become involved in any argument with the officials of Phoenix relating

[fol. 856] to their alleged rights under our patent even though we believe that they are misinformed."

Now there was the philosophy that went through both of these situations—not only Husqvarna but Phoenix—to show a little bit of tact.

Here is a letter, Government's Exhibit 119, a proposed letter to Mr. Schwalb of Phoenix.

It begins:

"This will acknowledge receipt of your letter of March 9, relative to the action we have taken with the Tariff Commission in Washington.

"We are not informed as to any right you may have under our United States patent of Gegauf No. 2,832,302 which is now before the Tariff Commission. The application for this patent was acquired by Singer in good faith and before its acquisition an exhaustive examination was made which included records in the Patent Office in Washington and we found no licenses or assignment adversely affecting our title.

[fol. 857] "This week the Tariff Commission decided to institute a formal investigation and has set hearings for May 5, 1959. Under the circumstances I think it best for all concerned not to enter into a discussion of this matter until after final hearings by the Commission have been concluded.

Just a pass-off letter, obviously no intention whatever and no indication of any intention of getting a Commission order, and then behind its back entering into a license agreement with Europeans.

A letter of April 3, 1959 to Mr. Schwalb, which is Government's Exhibit 120. Mr. Kircher writes:

"We are not informed as to any right you may have under our United States patent of Gegauf No. 2,832,302 which is now before the Tariff Commission. The application for this patent was acquired by Singer in good faith and before its acquisition an exhaustive examination was made which included records in the

Patent Office in Washington and we found no licenses or assignments adversely affecting our title."

Then he goes on to say, attempting, as I say, to avoid [fol. 858] a dispute as recommended by Mr. Stanford:

"As you no doubt have been advised, the Tariff Commission has decided to institute a formal investigation and has set hearings for May 5, 1959. Under the circumstances, while this matter is pending before the Commission, I think it best for all concerned not to enter into discussions of this matter until after final hearings by the Commission have been concluded."

Now where is there any implication whatever that after they had been concluded that we had gotten and successfully obtained an order of exclusion, that we would then start in granting licenses which would take the order away?

The Court: Would it be convenient now to adjourn to tomorrow morning?

Mr. Pettit: Yes, your Honor.

The Court: Will ten o'clock be all right tomorrow morning instead of 10.30?

Mr. Pettit: Yes.

The Court: All right, ten o'clock. Thank you.

(Adjourned to Tuesday, May 16, 1961 at 10.00 o'clock a.m.)

[fol. 859] UNITED STATES OF AMERICA

vs.

THE SINGER MANUFACTURING CO.

New York, May 16, 1961, 10.00 o'clock a.m.

Trial resumed

COLLOQUY

Mr. Elkins: If your Honor please, at yesterday's session there was a discussion by opposing counsel as to certain practices of the United States Tariff Commission, and according to him, as I understand it, once an order issued by the President of the United States, thereafter Singer could not grant licenses to others or, if it did grant licenses to others, then the order of the President of the United States would be rescinded.

At the time we asked for citations of the statutes or regulations so providing, and we would like to receive them, your Honor, for our own benefit.

The Court: I understood that those regulations were going to be collated, at least by reference numbers from the Registers, and that we would get them.

Mr. Pettit: That was the very first thing I was going to address myself to this morning, your Honor.

The Court: All right.

Mr. Pettit: I will refer first to the U. S. Code, Vol. 19, [fol. 860] Sec. 1337. That is entitled Unfair Practices in Import Trade, Unfair Methods of Competition Declared Unlawful.

This sets up the machinery for making investigations after first declaring certain unfair methods of competition, unfair acts and importations of articles into the United States as being unlawful.

These provisions provide that investigations should be made by the Commission, provide for hearings and review, transmission of findings to the President, exclusions of articles from entry, entry under bond, and then in subsection (g) it provides, under the heading Continuance of Exclusion: "Any refusal of entry under this Section shall

continue in effect until the President shall find and instruct the Secretary of the Treasury that the conditions which led to such refusal of entry no longer exist."

As early as June 30, 1955 there appeared a notice in the Federal Register. This is under a big heading. It says, Notices, Department of Treasury, Bureau of Customs. It deals with cigar lighters, revocation of order prohibiting entry into the United States, dated June 28, 1955, and it says:

> "There is published below a memorandum from [fol. 861] the President to the Secretary of the Treasury dated June 20, 1955 containing an order issued pursuant to the authority contained in Section 337, Tariff Act of 1930 as amended, revoking the order of the President dated March 17, 1934 as amended, excluding certain cigar lighters from entry into the United States."

This is then signed "Ralph Kelly." This then is followed by a memorandum for the Secretary of the Treasury:

> "Certain cigar lighters are now being refused entry into the United States under Paragraph (a) of the President's Order of March 17, 1934 issued pursuant to provisions of Section 337 of the Tariff Act of 1930. I now find that the conditions which led to such refusal of entry no longer exist and the said order of March 17, 1934 as amended is hereby revoked. You will please be guided accordingly."

[fol. 862] There is a case where a patent became or was declared illegal subsequent to the order. This was an occasion for revoking the order that had been outstanding. I cite that merely as an example of one of the type of things that can occur to have the President step in and cancel the order.

There is another case where after the complaint before the Tariff Commission had been filed, while an investigation was proceeding, the petitioner issued licenses to foreign importers. That caused, or the discovery of it, the dismissal of the petition. There the Tariff Commission——

The Court: Where is that found? What is the citation?

Mr. Pettit: That is entitled "List No. D-7-17", and is dated June 23, 1958. It is entitled "United States Tariff Commission". It is "Public notice, complaints dismissed, certain expansion bracelets and parts thereof".

I would like to read this notice.

The Court: Could you have copies of those submitted to the Court and give Mr. Elkins copies, too, please?

Mr. Pettit: I will indeed.

[fol. 863] The Court: All right. You say that because of these regulations or these practices that Singer was reluctant to even negotiate with anybody for a license which would permit further importation?

Mr. Pettit: Or to entertain any possible thought of issuing licenses after obtaining the order.

The Court: You say that is the reason for it?

Mr. Pettit: It had its own reasons for not licensing, and I doubt very much that it would have licensed anyone under any circumstances because it has been its policy not to license.

My point is here that this renders rather ridiculous any argument that Singer was affirmatively planning licensing Europeans as soon as the Tariff Commission proceeding was over. It is hard to prove one's thoughts and intentions as to the future. It is perfectly easy to prove that they couldn't possibly have entertained any such thoughts because of rules and regulations that would have made it impossible for them to do so.

Now it is just a matter of common sense because the Tariff Commission won't act as a collecting agency, and this is part of what I am going to read now, if I may. Obviously they are not going to let a petitioner pull the [fol. 864] wool over their eyes—come in and say it is not going to license anybody and then as soon as it gets an order, issue a license and start collecting royalties.

That does not have to be argued, your Honor. That is just so obvious, that I do not see how any question can be asked about it. But we have the Tariff Commission to stop that kind of business.

This says:

> "After preliminary inquiry in accordance with section 203.3 of its Rules of Practice and Procedure 19 F.F.R. 203.3), the UNITED STATES TARIFF COMMIS-

SION, on the 18th day of June 1958 DISMISSED the two complaints filed under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) by Speidel Corporation, 70 Ship Street, Providence, Rhode Island, alleging unfair methods of competition and unfair acts in the importation and sale in the United States of certain EXPANSION BRACELETS AND PARTS THEREOF. Notice of the receipt of these complaints was published in 21 F.R. 8473.

"The principal reason for the dismissal of the complaints is that while the prayer in the complaints was [fol. 865] for the total exclusion from entry into the United States of foreign articles made in accordance with United States patents because the effect or tendency of such imports is to destroy, substantially injure, or prevent the establishment of, domestic industries producing expansible bracelets of construction and design covered by the claims of such United States patents, Speidel, since the filing of the complaints, has entered into extensive licensing arrangements with major importers of allegedly offending bracelets."

The next paragraph says:

"Section 337 is not an extension of the patent laws and its purpose is not to protect patent rights as such. The complaints set forth that the domestic-manufacturer licensees are not granted licenses to import, and pray for the exclusion from entry of all bracelets which infringe complainant's patents in order that the public will not 'lose an important domestic industry developed by private capital' whose economic justification was based on the protection of the patents. Complainant's action in granting import privileges to several of the large importers charged in the complaints as violating section 337 indicates [fol. 866] that complainant is not so much concerned with the protection from injurious import competition of domestic industries that owe their existence to the patents involved as he is with royalties, whether the royalties come from domestic producers or from importers.

"By order of the Commission" and signed "Donn N. Bent, Secretary."

DISCUSSION OF SIGNIFICANCE OF EXHIBITS BY MR. PETTIT

I will now deal, your Honor, with the bringing of the infringement actions by Singer after issuance of the Gegauf patent.

The first specific mention of any specific action occurred in Government's Exhibit 153, a letter of March 7, 1958, from Mr. Stanford to Mr. Kircher. This letter points out

> "We hope to be in a position to bring immediate suit against one or more of the various United States Brother Companies as soon as the United States Patent Office issues as patents our Johnson and Gegauf applications. We anticipate that such two patents will be issued within the next eight weeks."

A few weeks before that there had been a general reference to the bringing of infringement suits when the [fol. 867] patent issued. That was dated February 18th, I believe, and was contained in a letter to Mr. Kirker, and is Government's Exhibit 127.

As far as I know, that is the first reference found in any of the papers to a potential suit, and this Government's Exhibit 153 is the first reference to any specific suit and referred to Brother.

This was followed by a letter dated March 14, 1958, to Mr. Crawford from Mr. Kircher, President of the Singer Company. This we offer for the purpose of showing the warning that was given to Brother.

This letter says:

> "I enclose herewith a copy of a letter which Mr. Waterman has written to Mr. Yasui of the Brother Company dated March 11. You will note that the letter constitutes an informal and friendly warning to Brother that their machines infringe certain of our patents and also certain of our patent applications which are expected shortly to mature into patents. The infringements involve only the sale of Brother

machines of the types indicated in the letter in the United States and Canada."

Now the type of machines indicated was, of course, the [fol. 868] 401 machine.

On the second page the letter states:

"Before reaching the decision to proceed aggressively to enforce these patents and before deciding to send the letter to Yasui, we naturally took into account the impact which this would have upon our new effort to obtain validation in Japan."

That, of course, your Honor, refers to validation of the contract in Japan which Singer was trying to work out with reference to the manufacture of machines.

The letter continues:

"While the effect is difficult to guage, it was our conclusion that the overwhelming importance of protecting the 401 Machine from infringements by Brother and other infringers made it necessary to subordinate considerations relating to validation in Japan to the larger interest."

It goes on to say:

"While one might be inclined to think that the effect in Japan would be harmful, upon reflection I am not convinced that this will be the case. It might rather indicate to the Japanese the present and potential technological power of the Singer Company from which they might conclude that it would be desirable [fol. 869] for them to reach some accommodation with us in Japan."

On April 16, 1958, Mr. Stanford wrote a letter again to Mr. Kircher—and this is Defendant's Exhibit 39. It states in the last paragraph:

"Our United States Gegauf patent application will issue as a patent on April 29, 1958 and we should be ready to file suit against the United States Brother concerns on that date. With your approval, we pro-

pose to file one or more of these suits on or about April 29 unless in the meantime the Japanese Brother Company responds favorably to Mr. Waterman's letter."

There is a note at the bottom of the letter which says

"Discussed with Williams 4/16 told him to hold off on filing until I return from Europe"

and followed by the initials of Mr. Kircher.

On May 20, 1958, Mr. Waterman wrote a memorandum, the subject of which was "Second Visit of Mr. M. Yasui, President of the Brother Company, at 149 Broadway"—that is Defendant's Exhibit No. 40.

In this it is stated at the bottom of the first page:

[fol. 870] "The result of this visit was that Mr. Yasui was informed it was necessary that we take action because of the great number of machines of various makes that are being imported into the United States which infringe our patents and our applications, which will become a patent shortly. He was informed that we were obliged to start proceedings at once but that we would in no way publicize our action, hoping that he would be able to receive the report of his attorneys and take the matter up further with us before the subject would become common knowledge."

Mr. Williams was there instructed to see about the institution of the suit against Brother International, but of course under the instructions that it was not to be publicized and we would still be waiting to hear further from Brother.

On July 31, 1958, Mr. Stanford wrote to Mr. McKinnon, the company representative in Japan—a letter which is Government's Exhibit 156.

The government points out in paragraph 5 of this letter which reads:

"We have for some time been planning to institute in the United States an action under United States [fol. 871] Tariff laws which action would involve many

if not all of the United States importers of Japanese zigzag stitch sewing machines."

And it argues from that that since it states that "We have for some time been planning to institute", that a fortiori that means it went back before the acquisition of the patent. He failed to note that in the preceding paragraph the same phrase was used "We have for some time been planning to institute in the United States a second infringement suit".

So there the "some time" includes only a period back to the institution of a second infringement suit with respect to an importer and a dealer of infringing Japanese machines.

You will remember that Singer first started against Brother, and then started an action down in South Carolina. This for some time automatically was limited to a period even after the filing of the Brother suit, and yet the government argues that for some time in the next paragraph—he does not cite any authority, he just said blandly that that shows that it goes back for a substantial period before the acquisition of the patent application.

[fol. 872] On August 5, 1958, Mr. Crawford wrote a letter to Mr. McKinnon, which is Defendant's Exhibit 41. He states in the second paragraph:

> "We believe you will be pleased to find that, generally speaking, the policies being followed in regard to the patent infringements will not disturb your efforts and the efforts of our friends in Pine and Japan Steel in regard to validation. We think in advising our friends of the patent situation you should use the deferments in the actions (whether necessary or otherwise) to emphasize how closely we are cooperating and giving every consideration to their views and thus we expect they will push in every way possible for prompt validation of the basic agreements as now amended."

I point this out, your Honor, to show that there were problems involved even in the commencement of suits against Brother entirely foreign to Mr. Gegauf, and Singer was looking after its own interests at all times, wholly

unencumbered by any thought of Mr. Gegauf or the effect that it would have upon him.

We had validation problems in Japan as well as problems of suit in the United States, and Singer was thinking [fol. 873] solely of its own interest with respect to both.

I will take up next—well, before I leave that subject I would like to call attention to the fact that in this Brother action, a motion was made by Brother to delay the trial of the action until after the determination of this present suit.

I will only read the first portion of it. It says "Now comes the defendant"——

Mr. Elkins: If your Honor please, I do not know if this is in evidence or not.

Mr. Pettit: I am going to put it in evidence—I mentioned before that I was going to offer it in evidence.

Mr. Elkins: May we ask that it be marked?

Mr. Pettit: Your Honor, here is the situation. He has put in evidence an answer in this very Brother case in which they make all kinds of allegations.

The Court: The suit is pending in this court, isn't it?

Mr. Pettit: Yes.

The Court: I think I will take judicial notice of the entire file.

[fol. 874] Mr. Pettit: May I just read the first paragraph?

The Court: Yes, without introducing it in evidence.

Mr. Pettit: "Now comes the defendant Brother International Corporation, by its attorneys, and moves this Court for an order staying all further proceedings in this action pending notice of the decision by this Court in a co-pending action entitled, United States of America v. The Singer Manufacturing Company, Civil Action No. 154-108, wherein the present plaintiff is defendant."

The Court: I will make this statement, I think there is authority for the Court to take judicial notice of the files of the court on other litigation in this court.

Mr. Pettit: Your Honor, that is obviously put in as part answer.

The Court: If you want to put it in to make the record complete, all right. I intend to look at the file anyway, so that there will be no mystery about it.

Mr. Elkins: It is quite irrelevant to any issue presented here.

The Court: I do not know whether it is or not. There is [fol. 875] a lot of this material in evidence which apparently is irrelevant, so one more doesn't mean too much.

Mr. Pettit: I will then offer this in evidence.

The Clerk: Does your Honor want to receive that?

The Court: Yes, as an aid to the Court.

Mr. Pettit: You will remember we were even bringing successive suits in South Carolina in order to bring this matter to issue, yet the government argues that we brought the Tariff Commission proceeding in order to avoid it.

(Marked Defendant's Exhibit 124 in evidence.)

Mr. Pettit: I next wish to take up plaintiff's argument with reference to Singer's withholding payment on its filing fee, in response to requests from Gegauf that it be held up.

Now it is true that because Singer had its own problems, as shown by some of these letters that I have read, Singer at that time was in no hurry to get out the patent, as far as one week or ten days or two weeks were concerned. It was not even prepared to bring the action at that time against Brother or anybody else. It therefore [fol. 876] did write in one of the letters indicating that it should or would hold up the filing fee for a short time.

The government fails to point out that Mr. Gegauf's worry was about a Van Tuyl patent and——

Mr. Elkins: I do not know whether that is in the record, your Honor, of any document to which Mr. Pettit is referring.

The Court: There is a letter here from Gegauf saying that the filing fee or the payment of a filing fee be withheld, and there is a response from Singer that they would hold it up a little while, that no harm would be done, and then a subsequent letter saying that they were not going to hold it up for a longer time because the 30-day period was about to lapse.

Mr. Elkins: I am referring to a statement by the defendant now that Mr. Gegauf was concerned with a Van Tuyl patent at this time in, I think, 1958, and I do not believe there is anything in the record.

The Court: I do not know what the Van Tuyl patent is. This is the first I heard of it in this case.

Mr. Elkins: It does not appear in the documents to be discussed—I do not believe it does.

[fol. 877] Mr. Pettit: I will put the Van Tuyl patent in evidence.

The Court: What does it have to do with this case?

Mr. Pettit: I want to show, your Honor—may I say one word about this before I answer that?

The Court: Yes.

Mr. Pettit: I am delighted that counsel is asking for any document which will show that Van Tuyl was in Gegauf's mind.

He resorted to a little psychology yesterday, and I am raising a little question of psychology here. He has the letter, and he made a great commotion over it, from Mr. Magnoni. Mr. Magnoni, in his letter of September 19, 1956——

The Court: That is the Italian patent lawyer?

Mr. Pettit: Yes.

The Court: All right.

Mr. Pettit: —which is Plaintiff's Exhibit 32, states:

> "Mr. Gegauf has been strongly impressed by the fact that the U. S. Van Tuyl patent No. 2,590,907 might very dangerously anticipate its invention. In effect, a third party who might know that the said Van [fol. 878] Tuyl patent exists might take steps for having the Gegauf German patent held not valid."

Now your Honor, why is it that the government told you that they did not have the slightest idea of what patent Mr. Gegauf was worrying about?

Well, I think I can give the answer. They knew that there wasn't anything in this letter that was reliable for any purpose, and within three days after they read it they had completely forgotten that he even mentioned it because they paid no attention to it at the time they read it.

The Court: I forgot it, too.

Mr. Pettit: What did you say?

The Court: I had forgotten the Van Tuyl patent was mentioned.

Mr. Elkins: Your Honor, we have not forgotten it. We remember that it is dated 1956 and that the present documents I thought being discussed by the defendant related to 1958, and we also notice that the Gegauf 1 patent as issued made no reference to a Van Tuyl patent, and we merely state that there is nothing in the documents showing that the concern of Mr. Gegauf in 1958 was the existence of the Van Tuyl patent. He was concerned about it back [fol. 879] in 1956. We do not know whether or not that was his concern when he asks Singer to delay payment of the patent fee in order to hold up the issuance of Gegauf Patent No. 1, but as we say when the Gegauf 1 did issue it did not refer to the Van Tuyl patent. For all we know the patent in question that was concerning Gegauf at this time was the Dunbar patent and not the Van Tuyl patent.

Mr. Pettit: Your Honor, this is the same application pending in Germany at the time in question, and it is perfectly apparent that his worry went all the way through.

I will show that the Van Tuyl patent was cited on the back of each of the following patents: Johnson, Perla and Vigorelli.

Furthermore, it had been cited and discussed in the proceeding itself in Harris, and it had been taken up and disclosed in Germany by Wiegand. You asked—I will read the letter, Government's Exhibit 10, which is a letter from Dr. Wiegand. He says:

> "Referring to the conference with Mr. Stanford and Mr. Kruger on the 7th inst. I beg to report that I have discussed the matter in detail with the competent examiner for Class 52a. In doing so it was [fol. 880] found that the examiner did not know any better material than that known to us.
>
> The examiner was extremely pleased to get knowledge of the American Patent No. 88,282."

Which is the Dunbar patent just referred to by Mr. Elkins.

> "He also took a note of the British Patent 19,184/1908 and the copy of the German Patent 219,187 which I submitted."

Your Honor, the very purpose of this visit back in 1955, before we had come to any agreement with Gegauf, and when the company was doing everything it could to get any information in the hands of the examiners that would destroy the patent, the patent attorney went in to give information on everything that we had—bearing in mind that this was before we had any arrangement with Mr. Gegauf.

[fol. 881] Now the point of all this, your Honor, is that a big fuss is made over nothing. Singer knew that there was nothing that would be disclosed in any respect that would bar any of these patents by this time. It was not in a hurry itself, and it just delayed it in order to accommodate a man wishing for a delay, knowing full well that it could have no effect whatever on the patent situation.

The reason the Van Tuyl patent was cited and the reason it was discussed was because it deals with cams. It had a stack of cams, but the cams were used to select thread. A machine could have three different threads available underneath and one on top and it could have different colors. This was a mechanism for the selecting of thread. It had nothing to do with the mechanism relating to the movement of the needle. Therefore it was merely an example of a prior art, of using cams to move something, and it never, in any Patent Office stood in the way of these inventions or the issuance of any patent.

Mr. Elkins: If your Honor please, this certainly is or appears to be testimony, and we ask that it be stricken. [fol. 882] There is no rule of practice, your Honor, that says that a witness cannot take the stand and testify as to these matters.

The Court: He is now about to offer this Van Tuyl patent in evidence, I understood, and this was his little explanation of it before he offered it in evidence.

Is that correct?

Mr. Pettit: I think the documents will show that my explanation is correct. I rely on the documents.

The Court: You now offer it in evidence?

Mr. Pettit: I now offer the Van Tuyl patent in evidence.

The Court: Any objection?

You say this Van Tuyl patent disclosed the use of cams

to make a selection of needles employing various colored threads?

Mr. Pettit: Not to make a selection of needles, no, your Honor; to make a selection of thread. It did not have anything to do with the movement of the needle laterally. Whether it selected a needle and selected a thread, I will have to ask Mr. Williams.

The Court: It must have selected the needle through [fol. 883] which the thread——

Mr. Pettit: It is not a zigzag machine, I am told, and it selects only thread. So it is cited because it is an example of prior use of cams to make a selection, and that had the same thing. It had a means of selecting the cam.

Mr. Elkins: We do object to this, your Honor, as being irrelevant. It does not relate to the subject matter now under discussion.

The Court: Objection overruled. I am going to take it because it is specifically referred to in Government's Exhibit 32, if for no other reason.

(Received in evidence as Defendant's Exhibit 125.)

Mr. Pettit: Your Honor, the next documents I wish to take up are those with reference to Mr. Heimann's suggestion to Mr. Gegauf transmitted again to Singer, contained in Government's Exhibit 66. The government miscites, I think quite considerably, this letter and draws inferences and implications from it that are wholly unfounded. On the second page it is said:

> "During a discussion with Mr. Heimann of the Pfaff Company he asked me whether I believe that [fol. 884] also the Singer Company would be prepared to help that a further gaining ground of the Japanese machines on the European market be prevented in respect of patent rights."

That follows a discussion of his problems in Germany and plans that he was trying to work out in Germany to work up some kind of opposition to Japanese imports. They in Germany were agreeable. He had ended his previous paragraph by saying, "I hope to be able to induce those firms, which made interference"—and I think he

meant opposition—"against our application, to withdraw their interference under certain conditions."

This sentence is clearly asking Singer, an organization which does business in Germany, which belongs to associations in Germany, would Singer also join this group, and you will notice the pencil mark or pen mark out to the right in which it says "No."

Mr. Elkins just completely transposes the "also" and reads it that Singer has already made one agreement to that effect and they are asking whether they will also make another agreement to that effect. Now, the language isn't there. That is just Mr. Elkins' imagination and it is the way he would like to have it. This sentence is perfectly [fol. 885] clear that it is asking whether Singer would join the people in Germany, and the answer was no.

He also makes great comment, and long, on the next sentence which says: "As it seems people know already that a patent arrangement was reached between the Singer Company and the Bernina . . ."

Here again one word is seized upon, as is "pool," and every implication that can be drawn from it that is illegal is immediately put into it. This is just not a layman in Germany writing a letter; this has everything that a lawyer can put into a patent arrangement that is illegal. Mr. Elkins reads it in.

Mr. Gegauf had, in fact, two different agreements with Singer. He had made a cross-license agreement; he had made an assignment with a license back. What reason leads him to think that he had in mind anything other than the existing fact that he had made these arrangements? And I think, when he says a patent arrangement was reached, he means exactly the arrangement that was reached, first, cross-license and, second, the assignment and the license back.

Mr. Elkins stopped with the comment that Mr. Waterman simply noted the contents and sent them along. He [fol. 886] didn't care to refer to a subsequent document that was written by Mr. Stanford. You will note that this letter, in which this Heimann reference was referred to was sent to Mr. Stanford, patent counsel, by Mr. Waterman, and he says "will await your comments concerning the question raised by Mr. Heimann."

Now, he got Mr. Stanford's comment which was given as a result of a request of the vice president of the company and was given to him as an attorney to the vice president. This reply is dated August 26, 1958, which, as you will note, if Mr. Elkins does not object, is normally a vacation period. This is Defendant's Exhibit 55. Mr. Stanford wrote:

> "I have a copy of Mr. Gegauf's letter of July 25th which you sent to me along with the referral slip asking for my comments on the paragraph concerning the question raised by Mr. Heimann of the Pfaff Company."

He then says:

> "Before making any comments I would like to clear up a statement made by Mr. Gegauf in the second paragraph on page 2 of his letter. Mr. Gegauf infers that a patent arrangement has been reached between Singer and Bernina."

[fol. 887] This sentence is then repeated: "This implies that we have some type of patent arrangement with the Bernina Company. As you know, this is not true. All we have with Bernina is an agreement whereby the Bernina Company may continue to make a certain type of automatic zigzag stitch sewing machine without fear of suit from Singer, and Singer may continue to make its Class 401 machines without fear of patent infringement suits brought by Bernina. There are no"—and I think your Honor must read in there "other" because he just cited cross-licenses—"cross-license agreements whatsoever and we have not agreed to anything concerning patents other than not bringing infringement action against Bernina."

Mr. Elkins: Excuse me. What is that exhibit number?

Mr. Pettit: Defendant's Exhibit 55. At the bottom of the page he says:

> "I only wanted to point out these facts to make it clear to you that in my opinion we have dealt at arm's length with Bernina and Mr. Gegauf. To agree with Pfaff, Bernina and possibly other sewing machine manufacturing companies that we would take any

[fol. 888] concerted action or favor one or more of any group would in my opinion be unwise and contrary to the Singer policy heretofore rigidly adhered to of not working in concert with one competitor against any other competitor."

Now, your Honor, we may look back in Government's Exhibit 27——

Mr. Elkins: If your Honor please, this is not Defendant's Exhibit 55.

The Court: According to my notation it is. Here it is here. It seems to be a most potent piece of evidence in favor of the defendant. I have read it a number of times as being a contemporaneous writing. It negatives all idea of conspiracy.

Mr. Elkins: We will address ourselves to it, your Honor. All I wanted to do now is check the exhibit number.

The Court: Let's clear this up. Is there any question about this? I have it here as Defendant's Exhibit 55.

Mr. Pettit: I point out that the government has their red marks on it, and the only thing they marked is where the same thing was repeated. I would think he was probably interrupted on the telephone.

[fol. 889] I am told that there is another letter of August 26, 1958, which is marked as Exhibit 42.

Mr. Weinstein: All right.

Mr. Pettit: I want to continue, your Honor. I would just say that that language is strangely reminiscent of some similar language used just two years before. You will remember that when Mr. Vigorelli made a suggestion back in 1956 that there be some kind of cooperation, this was written two years prior to this:

"What Mr. Vigorelli had on his mind was that now that Singer, Bernina and Vigorelli had arrived at certain agreements they should thereafter act in concert against others. This we very promptly said to Mr. Vigorelli was out of the question, and he was advised that what appeared to us to be proper action was for each one to prosecute his own patents and take care of any cases of infringement that might appear. We stated that certainly this would be Singer's attitude with respect to the patents that it owned."

The Court: That was which exhibit number?

Mr. Pettit: That is Government's Exhibit 27, exactly the same refrain each time it is mentioned by any Euro- [fol. 890] pean: We do not act in concert with respect to patents.

And maybe one indication of lack of concert would be Defendant's Exhibit 56. This is a letter to Mr. Adamson from Mr. Sanford referring to the withdrawal by Gegauf of Gegauf's application in Germany. You will bear in mind that this was an application under which Singer was licensed and in which the government said we had great interest and were going to benefit completely by the failure to show the Van Tuyl patent which, in fact, had nothing to do with it. Here is what happened with respect to that application, This letter says:

> "Page 4 of your letter contains a notation that the above identified Gegauf German application had been withdrawn and that the effects of a provisional protection are considered as not having taken place."

So we got the information that Mr. Gegauf had withdrawn his application from Mr. Adamson, not from Mr. Gegauf. This letter goes on and says:

> "In view of this situation we would be pleased if you could determine the exact status of this German application and why it was withdrawn. We presume [fol. 891] that in view of the withdrawal of this application there is no possibility of having a German patent ultimately issue therefor."

Now there is Mr. Gegauf acting upon his own without any reference to Singer, without asking Singer whether it thought there was any point or need or purpose of withdrawing it or as to even whether it objected to it, and that an application under which Singer had a license.

Next I will discuss Singer's endeavor and ultimate success in obtaining a license of the Vigorelli patent dealing with the movement of the feed. This is a very interesting piece of mechanism, one that appeared no place else as far as we know.

Mr. Elkins stressed, and he put in each document that

he could that would show, that Singer was interested in it only as a patent, not the slightest indication that Singer could be interested in it for any other purpose. Each little document he took was one where it would have some verbiage that would indicate we were interested in getting the patent, and then he picked one or two reports, not all but one or two reports, where people were not in favor of the machine, and he left out every single one of the [fol. 892] reports showing a detailed, careful and extensive study by Singer of the mechanism, of the machine itself, in trying to determine whether the machine would be one that Singer wanted to use.

He cites, in Government's Exhibit 141, the letter which has the statement in it, "The consensus of opinion seems to be that the facts do not warrant our being interested in making such an offer," and he cites down below "The thing I was concerned about is patents." He didn't read over on the next page, "Certainly the work produced on it is phenomenal and far beyond anything that has been produced on the 401."

He cites Government's Exhibit 143, signed by Mr. Aurell, which would indicate that we probably should just get a patent:

> "I understand that the new Vigorelli mechanism is quite radical and that their patents, when issued, may be of such a nature that we could not develop a similar machine without infringing. If this is correct, it seems to me that regardless of the degree of value to us of these patents at the present time, in order to maintain our traditional leadership in the sewing [fol. 893] machine field, it would be advisable to make a deal with Vigorelli, before it is too late."

Now we come, though, to other documents which he doesn't refer to and has not the slightest interest in; and I refer you to Defendant's Exhibits 67, 68, 69, 70, 71, 72, 73, 74, 75 and 76, and I will come later to Government's Exhibit 144. These that I mentioned up to 76 are all defendant's exhibits.

What are these? These are reports by various individuals in the Singer organization acquainted with the manufacturing techniques, the operation of the machines,

the salability of machines. The entire organization had been put to work examining this machine, and in each one of these the general form starts with, first, Sales Feature, and it is divided into A. Positive and B. Negative. It then goes on to the second division, Technical and Performance Characteristics; C. Questionable Characteristics; IV Service Problems.

Now if you will note, every single one of these reports goes into a detailed analysis of the machine, not into an analysis of the patent. It goes into an analysis of the machine and whether it has good features or bad features, whether it would be salable, and whether Singer could use [fol. 894] it, and this goes on and on. I think there are at least nine or ten different memos of the organization that had examined that machine and made a report on it.

This ends with Government's Exhibit 144 which Mr. Elkins read and, I think, without comprehending the significance of what was said in what he read. If you look at Government's Exhibit 144 in the last paragraph, you will find that Mr. Lightner sums——

The Court: Suppose we give you a few minutes rest while this air raid siren is going on. Take a five-minute rest. I don't think you can compete with it.

(A short recess.)

Mr. Pettit: The significance of all this search into the workability, feasibility of the machine itself is shown in the last paragraph of Government's Exhibit 144. Mr. Lightner, writing a letter to Mr. Waterman, says:

> "The thing that I find to be missing is an analysis of the patent situation; that is, what is there in the patent area which we can acquire? To state it differently, what can we make a machine do if we acquire the patents that would be secured in a new deal with [fol. 895] Vigorelli and that we cannot do under our present patent situation?"

In other words, he is calling attention to the fact: Don't limit yourself just to what this machine can do, but before we acquire any Vigorelli patent, let's have an analysis of what we can do as we now stand and see whether the

Vigorelli patent lets us do something more. Again, a complete indication of what they are interested in is what kind of machine they can make, and if they cannot do something with a new patent, they cannot do now, then there is no point in getting it.

And this correspondence was concluded by Defendant's Exhibit 77, a letter written to Mr. Vigorelli, in which it says:

> "We have now completed our consideration of this matter, from both the mechanical aspect and the question of infringement of the patents of others, and our conclusion is that we will not embody the mechanical features of the machine which you submitted to us in any of our present machines. However, at some time in the future, we may wish to manufacture and sell a machine having the control for the zigzag needle [fol. 896] and the feed-dog which is embodied in your machine. Therefore, we would be interested in acquiring a non-exclusive license from you on any patent or patent application which you may have filed covering this feature. If you would be interested in granting to us such a license on a royalty basis or any other basis, would you please let us hear from you."

And, your Honor, they heard from him, and the net result was an agreement that I would like to offer in evidence, an agreement under which Singer paid $25,000 to get these non-exclusive rights, this agreement between Vigorelli and Singer.

The Court: This is a new agreement just recently made since this suit was started?

Mr. Pettit: This was made since this suit was started, yes, sir.

The Court: And you offer this to negative any claim of conspiracy?

Mr. Pettit: No, I offer this—well, in a sense, yes, but I offer this primarily for the express purpose of showing Singer's interest in the feed mechanism covered by the patents, an interest that was in the possibility of Singer making the machine and not just for acquiring a patent, [fol. 897] and this applies with reference to the Messer-

schmitt application just the same as with Vigorelli. In other words, Singer was interested in the patent, the operating end of the matter.

The Court: Does this agreement that you now offer in evidence provide for a non-exclusive license to Singer?

Mr. Pettit: It provides for a non-exclusive license, yes.

The Court: Any objection?

Mr. Elkins: No, your Honor. We would like the date of it.

The Court: It is received in evidence then.

Mr. Elkins: We would like the date of the agreement. It does not appear on here that I can see.

Mr. Pettit: December 30, 1960 is the date.

Mr. Elkins: Is there any question now about that date, your Honor? Does the defendant concede that the date of it is December 30, 1960?

Mr. Pettit: It was executed without the date being filled in. I will offer here a letter of January 2, 1961, if you want, in which it refers to the date.

The Court: Just annex the letter to the agreement and we will receive them all as one exhibit. Just staple them [fol. 898] together.

(Received in evidence as Defendant's Exhibit 126.)

The Court: You say Singer paid $25,000?

Mr. Pettit: $25,000.

Now, your Honor, just as Singer, when it acquires patents or licenses, does so because it is interested in making or selling a product covered by them, it also is not interested in grabbing up patents merely to hang them around their belt as an Indian does scalps. We have several instances here in which Singer declined opportunities to buy patents relating to the zigzag field and the multiple-cam feed.

I refer to Defendant's Exhibit 1 dated March 25, 1954. This letter is entitled Selective Pattern Cam Control Means for Use in Conjunction with a Zigzag Machine—Mr. Pfefferkorn.

I might say this is a letter to Mr. Waterman from Mr. Stanford. It says:

> "As we understand the present situation, Mr. Pfefferkorn has offered to The Singer Manufacturing

Company all rights in a device in the nature of a selective pattern cam control mechanism for use in [fol. 899] conjunction with a family-type zigzag sewing machine."

At the bottom of the page it states:

"The pattern cam control mechanism as applied to the Turissa machine is connected with the bight regulator lever only so as automatically to shift such lever in a manner to produce various patterns of ornamental stitches."

It goes on to discuss the patentability of the idea. On page 3 it says:

"In view of the above, it is obvious that the subject mechanism is not broadly new. However, we believe that the cam plate with its concentric cam track surface design is specifically new as applied to a zigzag stitch sewing machine and is perhaps of a patentable nature. Also, it would appear that the specific form of variable speed drive mechanism is somewhat novel as applied to the rotary cam element of a zigzag stitch sewing machine. In view of this situation, we believe that specific patent protection might be had in most of the principal countries throughout the world. An investigation of our patent [fol. 900] records indicates that as yet no patent has been issued covering the subject mechanism. Furthermore, from the correspondence accompanying your letter, would surmise that only Swiss and/or German patent applications have been filed for this mechanism. We do not, of course, know when such applications were filed, if ever, but it is possible that it is not yet too late to file patent applications for this mechanism in countries other than Switzerland and Germany."

In the final paragraph it says:

"Summarizing, we believe that the present device comprises specific patentable subject matter only and that it infringes no Singer-owned patents, nor would it appear to interfere with any Singer developments

of which we have knowledge. In our opinion, the patent rights offered will be of little value to us unless Singer is contemplating developing a machine utilizing a structure similar to that shown in the drawing."

Now, your Honor, that concentric cam is the cam that is now being used by——

[fol. 900a] Mr. Elkins: We object, your Honor. This appears to be testimony. This is testimony, your Honor, and it does not appear from the document as to what the concentric cam is that is referred to there.

[fol. 901] Mr. Pettit: It shows that it has a concentric cam, that has the grooves and the cams and a follower that will follow it, and will transmit the information to the needle bar—it shows that.

The Court: There is no need for me to make a ruling now. Mr. Pettit's statement, if it is not borne out by the documentary exhibits, will be disregarded unless it is substantiated by oral testimony presented.

Mr. Elkins: Unless the defendant substantiates it.

The Court: Yes.

Mr. Elkins: Yes.

The Court: If it is not in the documentary evidence.

Mr. Pettit: Your Honor, I submit that it is in the document itself.

The Court: All right.

Mr. Pettit: Now Defendant's Exhibit 2 is a letter from Mr. Waterman to Mr. Stanford, which is referring to another possibility of acquiring the patent or patent application.

Defendant's Exhibit 3 is Mr. Stanford's answer to that. [fol. 902] This refers to a man by the name of Haas. He says:

"Investigation through our files indicates that the subject Haas zigzag sewing machine is disclosed in a Swiss patent of Haas No. 300,900, August 25, 1953. The machine disclosed in this Swiss patent appears to correspond substantially with Mr. Gebhardt's written description.

"From the Haas patent it would appear that the subject machine is particularly characterized by its

single disk cam which is provided on each of its two opposite faces with a plurality of cam grooves which are adapted to receive a pair of cam followers. Apparently, these cam followers may be manœuvered to engage selective cam grooves thereby to produce various types of ornamental stitches. From this, it is to be appreciated that broadly speaking the Haas zigzag mechanism is similar to that which has been proposed for use with a modified form of the Class 306W machine, as well as for use in the Experimental 282 machine. However, the claims of the Swiss Haas patent are concerned with the specific Haas structure, and, thus, we do not believe that they would interfere with Singer's right to manufacture and sell the above [fol. 903] noted modified Class 306W or Experimental 282 structures."

And not being in opposition, Singer had no interest.

The third example of this is one which we have already run across and appears in Government's Exhibits 52 and 53. This was another case where there was a patent application pending relating to the multi-cam situation.

On page 2 it is stated—this is in the letter to Mr. Kirker.

"The second U.S. application No. 435,832 we believe relates to the idea of having two zigzag mechanisms, one for fancy stitching and one for the usual zigzag stitching with means for shifting at the will of the operator from one mechanism to the other."

In other words, your Honor, a mechanism in which you can leave the multiple cam and go directly to a straight zigzag machine.

"If this is the 'divisional' application to which Mr. Gegauf refers, and we are now of the opinion that it is, then we are not interested in it and it is not necessary that it be included in the proposed agree- [fol. 904] ment."

Now I think, your Honor, that demonstrates no avaricious desire to acquire each and every patent that Singer runs across.

The Court: You have made that observation with reference to this same sentence yesterday.

Mr. Pettit: This is added to two others now.

The Court: Oh!

Mr. Pettit: I think it is triply so today.

The Court: Except I want you to know that I recalled it.

Mr. Pettit: I have become accustomed to that, your Honor.

We now come to the Tariff action itself, and this is one that causes great frustration to the government because it cannot quite make up its mind what position to take, just as it has not been able to make up its mind yet whether the Gegauf license agreement is part of the conspiracy.

As I understand Mr. Weinstein, he just simply denies that it is an action to stop the Europeans. He says that much of it is pure camouflage and is in fact an action to stop the Japanese.

Mr. Elkins does not seem to agree with that. He under- [fol. 905] stands that we are stopping the Europeans but he says that is something that they do on their own accord. So whether this is an action against the Europeans or not is not settled at the government's desk, but I think it is settled by the Tariff Commission complaint itself.

Before getting into that I would like to read part of a letter dated August 26, 1958, which is Defendant's Exhibit 42. This was written in connection with the preparation of the information for the Tariff Commission proceeding. This letter states, as written by Mr. Stanford to Mr. Waterman that the patent department has sent a report stating "that the subject Phoenix machine would infringe the following Singer-owned patents", and that includes 2,832,302. The heading of the letter shows that it refers to "German-made Phoenix zigzag sewing machine".

It says:

> "You have raised the question as to whether Singer should take any action against the United States importers and dealers of the Phoenix machine on the basis of our United States patent rights.
>
> "As you know, the above noted United States Harris and Gegauf patents are currently being infringed by a

[fol. 906] relatively large number of Japanese-made and a relatively small number of European-made sewing machines. To date, we have filed one civil suit against Brother International Corporation, the United States importer of the Japanese-made Brother machines. During the first week of September, we propose to file in South Carolina a civil suit against a dealer of Japanese-made Sanshin machines. We chose to file civil suits in connection with the Brother and Sanshin machines since it is our understanding that these particular machines are imported into the United States in rather large quantities."

Now here comes a very important paragraph:

"By the latter part of September we plan to file an action with the United States Tariff Commission for the purpose of preventing the importation into the United States of any and all sewing machines which infringe our United States Gegauf and Harris patents. Success before the Tariff Commission should obviate the necessity of Singer bringing separate civil suits against each importer of an infringing machine, whether it be made in Japan or in Europe."

[fol. 907] And the last sentence says:

"In the event that our Tariff Commission action fails, then it would be in order to file civil suits against any infringers of our subject patents."

There, your Honor, in the last sentence is the key to the reason that Singer was constantly saying "This is no time to talk." Obviously there would be two different results, depending on the decision of the Tariff Commission. If the Tariff Commission should do so now, then of course it would be in order to talk about infringement suits—and heavens knows how many.

On December 22, 1958, which is Government's Exhibit 157, Mr. Waterman wrote to Mr. Baumann:

"We are in the process of bringing an action under the United States Tariff laws, the result of which, if successful, would be to exclude from entry into the

United States all automatic zigzag machines of the type similar to the Gegauf-Bernina, Vigorelli, and the Singer Class 401."

It goes on to ask for information to help prepare the complaint, and it has to get information from Vigorelli. It says:

[fol. 908] "In order to properly prosecute this action, it will be necessary for us to tell the United States Tariff Commission about our outstanding licenses under the Gegauf Patent No. 2,832,302 to Gegauf-Bernina and Vigorelli, so that the Gegauf and Vigorelli machines will not be excluded from being imported into the United States."

Obviously, your Honor, that refers to the fact that if an order is entered the Customs office keeps every infringing machine out unless advised that it is licensed.

"Also, it will strengthen our case for us to advise the Tariff Commission of the approximate number of automatic zigzag machines exported to the United States by Vigorelli during the past 12 months. We are making, this same request of Gegauf-Bernina."

And Government's Exhibit 158 does make that same request with respect to Mr. Gegauf.

Now considerable commotion is made over the fact that in preparing this petition the company has to get information that directly relates to and must be furnished to the Tariff Commission. Where do they think the company will get information as to imports by its licensees except by writing and asking?

[fol. 909] We come then to the complaint, your Honor, and this is Exhibit S-11. This is the petition filed before the United States Tariff Commission, and I do want to note merely some portions of it that relate to what Singer was seeking to accomplish.

On the first page, the third paragraph it says:

"In complete disregard of Singer's United States patent rights a host of foreign-made automatic zigzag

machines, primarily from Japan, are being imported into the United States".

So here again is the use of the word "primarily", which is quite correct, and it shows on the face of the complaint that the primary ones are the Japanese.

On the next page it says:

> "Section 337, as interpreted and applied by the Commission and the courts, affords the only remedy and thus Singer thereby prays that the Commission recommend to the President that household automatic zigzag sewing machines and parts thereof covered by the said United States Patent No. 2,832,302, be excluded from entry into the United States for the term of said patent."

Immediately underneath that, under the heading of [fol. 910] "Complaint" it says

> "Complaint is hereby made, pursuant to Section 337 of the Tariff Act of 1930, as amended, against unfair methods of competition and unfair acts in the importation into the United States and sale therein of household automatic zigzag sewing machines and parts thereof which embody, employ or contain the inventions covered by the claims of the United States Letters Patent No. 2,832,302, dated April 29, 1958."

[fol. 911] On page 7, paragraph 4, it is alleged:

> "Singer has granted royalty-free licenses under said patent No. 2,832,302"—and I am skipping—"for importation into the United States of certain designated models of automatic zigzag machines manufactured by said companies in Italy and Switzerland, respectively. Each of said licenses was granted in connection with the settlement of overlapping subject matter in applications for United States patents filed by the respective parties. Singer is presently in the process of granting a license under said patent No. 2,832,302 to Sears, Roebuck & Company of Chicago, Illinois, for importation into the United States but limited to a certain designated model automatic zig-

zag machine manufactured in Western Germany by Gritzner-Kayser A. G. No other licenses are in existence or in contemplation."

On page 12, paragraph 16 it is alleged:

"Imports of said machines from countries other than Japan are also sold and offered for sale throughout the markets of the United States at prices below [fol. 912] the price of said Singer product."

On pages 15 and 16 there are listed United States importers of machines which embody the inventions of the Singer patent—large numbers of those importers.

On page 17 there is set forth under the heading Manufacturers of Machines Which are Imported into the United States and Infringe Singer Patent No. 2,832,302, and it will be noted that it continues for two pages. It is divided into the countries in which the manufacturers are located. The first heading is Located in Japan, and as you will see by looking at it, there are, of course, a large number of Japanese infringers—I mean manufacturers, and this, of course, becomes relevant with respect to a letter which I will get to in a few minutes.

On the next page it shows that there are a total of eleven manufacturers located in Sweden, Western Germany, Switzerland, Italy and Spain. That is, five countries and eleven manufacturers from Europe are cited as importers.

On page 22, in the final Wherefor clause, it says:

"Wherefor, Singer prays"—and in the last part of paragraph 2 it says that "the President forbid [fol. 913] entry, pending completion of an investigation by the Commission of household automatic zigzag sewing machines and parts thereof which embody the inventions and infringe the claims of United States Patent No. 2,832,302."

Under No. 4 it asks for the same relief upon completion of the investigation.

Now, your Honor, how anyone can read that complaint and raise or attempt to raise any serious question as to

either what it says or what it asks or what was intended is hard to understand.

Even Mr. Weinstein has admitted that it was absolutely necessary that we ask for all of them and seek all of them or else we would not even be before the Tariff Commission. And yet for some reason or other he says that we are not asking for it, although it is there in black and white.

They then refer to a letter written by Mr. Crawford to Mr. McKinnon—Government's Exhibit 161. He has forwarded a copy of the petition. He says in Government's Exhibit 161:

> "As you know, the Company had under consideration the filing of a complaint with the Tariff Commission against the import of zigzag sewing machines [fol. 914] which infringed your suppliers' patents."

This is written to Mr. McKinnon in Japan, who has charge of the entire Singer organization there.

> "This complaint has now been made, and for your information we attach a copy of the actual complaint. Since being lodged, the complaint has aroused quite a storm of protests by sewing machine importers and dealers, particularly those who import from Japan, and various newspapers have reported on these protests."

Here again, your Honor, Singer was confronted with a situation in Japan.

The letter goes on:

> "There will no doubt be similar repercussions in Japan for, as you will note from the complaint"—and I would like your Honor to note that the statement is "as you will note from the complaint, it is aimed more directly at Japan than at any other country but our position is that it is aimed at anyone and everyone who infringed our patents—and this should be your position."

What he is telling him is "In the face of repercus- [fol. 915] sions let them know that although by looking at the complaint you would think it was directed

mostly at the Japanese, assure them, so we will not have any trouble in Japan, that it is directed against everybody, and that should be your position and that is what you should tell them, so that they will know the facts and not merely to reflect something that is not the truth."

It was to let Mr. McKinnon know how to handle this situation and what to say and above all things to point out that it was directed against everybody.

At the end of the year Singer's patent department made its annual report. This is Defendant's Exhibit 45. The report is for the year 1958 and it states as follows:

"Some five years ago, this office was primarily concerned with the determination of the legal risks involved if our Company were to make and sell the Class 319 and 401 machines. At that time it was evident that one or more of our competitors owned United States and foreign patent rights which could seriously interfere with our automatic zigzag machine [fol. 916] program."

It then goes on to say:

"With the subsequent acquisition by Singer of domestic and foreign rights under the Harris, Vigorelli, Messerschmitt and Gegauf patents and the ultimate issuance to Singer on April 29, 1958 of Gegauf United States patent No. 2,832,302, our concern switched rather sharply from problems of defense to those of offense. This was caused by the fact that the Gegauf patent is presently being infringed in the United States by substantially all of the competing automatic zigzag machines."

And in the next subsequent paragraph it says:

"Accordingly we are attempting to gain relief through the seldom-used United States Tariff Rule 337 which, if successful, would result in a Presidential decree banning all further importations of the infringing machines during the life of our Gegauf United

States patent. The Complaint praying for such relief was filed on January 14, 1959."

[fols. 917-917a] On February 24, 1959, after the action had been brought, Singer continued its search with respect to the European machines.

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[fols. 918-920] Afternoon Session

Mr. Pettit: Your Honor, the government and the defendant have entered into a stipulation covering the foreign law which we discussed a few days ago, and I would like to offer this stipulation in evidence.

The Court: That is to be added to the stipulated facts, is it not? This is just an aid to the court?

Mr. Pettit: No, it is a stipulation as to the law of France, Italy, Germany, Great Britain and Brazil, as set forth in the stipulation.

The Court: All right, I will take it. Mark it as a court's exhibit. We did that with the other statement of facts. That way we won't confuse it.

(Marked Court's Exhibit 4.)

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[fol. 921] Mr. Pettit: Your Honor, I have already offered to you as an aid, a chart consisting of the tabulations of the various terms extracted from the three license agreements.

I would like to offer three more—two of which you have had once before but they were withdrawn.

Then I would like to have all of them marked, at a minimum, for identification just so as to have a record of the documents offered in court, and if Mr. Elkins has any objections on the grounds that they are briefs, I will say that they are just counted against his 50-page brief that he has already filed—and if they want them to go in as a statement of our position on these matters, I will let them go in that way.

The Court: We will take them simply as being illustrative of the defendant's position concerning these patents —not in any way as an exhibit but simply for identification to aid the Court, and such portions of it as I do not find accord with the facts I will disregard it.

Mr. Pettit: I would expect you to.

The Court: It is something to aid me in looking at these [fol. 922] patents.

Mr. Pettit: And as I understand it they will be marked for identification.

The Court: Yes.

Mr. Pettit: Then I would like to have marked for identification the documents showing the provisions of the various license agreements.

The Court: That is this paper here?

Mr. Pettit: Yes.

(Marked Defendant's Exhibit 133 for identification.)

The Court: I have another schedule, Gegauf No. 1 and the Harris Reissue. This has not been marked at all.

Mr. Pettit: I would like to mark two others first and then I will come to that next.

The Court: Let us take Exhibit 133 for identification. It will aid me if I get the information now.

What exhibit is the Singer-Vigorelli license agreement, do you know offhand?

Mr. Elkins: Government's Exhibit 11, your Honor.

The Court: I am just writing on this exhibit for identifi- [fol. 923] cation 133 these numbers—Government's Exhibit 11.

What is the exhibit number of the Singer-Gegauf agreement of April 14, 1956?

Mr. Pettit: Government's Exhibit 26, your Honor.

The Court: And the Singer-Messerschmitt license agreement of April 16, 1957?

Mr. Pettit: Government's Exhibit 86.

* * * * * * *

[fols. 924-925] Mr. Pettit: Now I would like to have marked for identification as an aid to the Court the chart that has on it five patents, that is, the names of five patents with certain information relating to priority

date, date filed, date issued, and the machine covered by the patent, that is, the Singer machine.

The Court: This is offered as an aid to the Court.

Mr. Pettit: All of the information contained here is covered in the stipulation of facts with the possible exception of the word "none" after Harris.

I am not sure that that specifically appears but the rest of the information does, and I would set forth the paragraphs in the stipulation of facts if that will be of any aid on the chart.

The Court: Mark it for identification.

(Marked Defendant's Exhibit 134 for identification.)

The Court: So that I can make similar notations on Exhibit 134 for identification, what is the exhibit number of Gegauf No. 1, 2,832,302? I just want to mark this and have it in such condition so that if I want to look at them I can find them all at once.

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[fol. 926] Mr. Pettit: Next I would like to offer for identification a statement setting forth the various conferences held and the dates of them, setting them forth by year and by month.

It starts with the Harris patent purchase conference June 9th, and it ends with the Gegauf purchase conference of December 4th, and the execution of the agreement on December 5, 1957—the first date was 1955.

This shows the spacing of the various conferences and the times that they were held.

(Marked Defendant's Exhibit 135 for identification.)

The Court: We cannot stop you from marking the paper for identification. It really should be part of a brief, but if you want to mark it for identification I cannot stop you [fol. 927] within reason.

Mr. Pettit: I am offering these because I think they will be a big aid to you in finding certain references. They are nothing else but that, your Honor.

The Court: I appreciate your motives, and I am grateful to you.

Mr. Pettit: Even in the discussion it is very hard to point out or state just when it falls.

The Court: All right.

Mr. Pettit: The chart setting forth the Gegauf 1 claim and the Harris claim I would like to have marked for identification—I do not believe that has been marked.

(Marked Defendant's Exhibit 136 for identification.)

Mr. Pettit: And finally I would like to offer for identification the chart showing first the mechanical elements of Gegauf Patent No. 2,832,302, or, in other words, Gegauf 1. And then have the claims that are left and are now in the Harris patent—that is the purpose of this, being to show that the claims that are left are wholly subservient to the Gegauf patent.

[fol. 927a] The information with respect to it is all set forth in paragraph 29 of the statement of facts.

(Marked Defendant's Exhibit 137 for identification.)

[fol. 928] Mr. Pettit: I have, your Honor, now only two more matters to cover.

The Court: All right.

Mr. Pettit: One relates to the Sears licensing and the other relates to the elimination of Pfaff from the license agreement and assignment.

With respect to the Sears license agreement, I have already mentioned our position, that Singer was not attempting to or desiring to license Gegauf No. 2 and that this was brought about by Sears' determination for its own purpose and reason. Singer was expecting to license, wanting to license, Gegauf No. 1, believing and asserting strongly that that was the patent that covered the machine Sears wanted to import.

[fol. 929] In Government's Exhibit 107, a memorandum to Mr. Bruder dated November 12, 1958 and written by Mr. Stanford, it says in the second paragraph—in the second portion of the paragraph numbered No. 1:

> "In our opinion each of these machines (referring to Sears machine) infringes Claims 1, 5, 6 and 8 of United States Gegauf patent No. 2,832,302 and Claims 1 to 7 and 10 of Canadian Harris patent No. 552,072. It is our position that Sears model 88 employs a single

cam follower and that the addition of the individual fingers between such follower and each of the cams does not avoid infringement of our United States Gegauf and Canadian Harris patents."

In Defendant's Exhibit 63, being a letter dated November 21, 1958 written by Mr. Stelzer to Sears, Roebuck & Company, who was in charge of these negotiations, and addressed to Mr. Bruder, the following is said, it being a quotation from a letter to Mr. Stelzer from their attorney:

"In our opinion a license covering the Gritzner Model 89 machine is warranted so far as your operations in the United States are concerned. Although [fol. 930] we differ with Singer's patent counsel as to infringement of the issued Gegauf patent No. 2,832,302, we feel that the machine will probably be covered by the forthcoming Gegauf patent."

Singer then proceeded with Sears to make a contract, under Sears' insistence, that it refer to Gegauf No. 2. I point this out, your Honor, merely to show that Singer was not the owner of Gegauf patent No. 2 for purposes of licensing or enforcing. This one single use of it was done under the compulsion of the licensee's own demand made for its own purposes.

These documents obviously show that in dealing with Sears Singer was dealing in its own business interests without any consideration of or thought of Gegauf, Vigorelli or anybody else. It will be noted that Singer entered into this license agreement although it felt that it might imperil the success of the Tariff Commission proceeding. That is not a step that it would take if it considered itself operating under any obligation to anybody else, and Mr. Weinstein pointed out that this agreement was made without any conference or consultation with Gegauf.

In Government's Exhibit 108 dated December 16, 1958, [fol. 931] a letter addressed to Mr. Kircher by Mr. Stanford, the following appears:

"All concerned with the present complaint believe that the outcome of our Tariff action to a large degree

will be affected by the existence of the Singer-Sears Roebuck license agreement. Mr. Colburn believes that in order to be successful we must be able to convince the Tariff Commission that Singer plans to enter into no further licensing agreements with other importers.

"Furthermore, in view of the importance of this aspect of our case, it would appear that it is necessary for us to give the Commission (but not the defendant) a frank but succinct explanation of the Sears license. Enclosed is a draft of a Statement 'B' which has been prepared for the Commissioner's use only."

The enclosed statement, which is Government's Exhibit 109, is a letter addressed to Mr. Kircher and signed by Mr. Stanford. It is entitled "Proposed Complaint Under Tariff Act of 1930 (Rule 337)." It refers to the statement [fol. 932] being inclosed, statement "B", "which has been revised in view of the suggestions made during our conference in your office on December 22, 1958. Mr. Colburn approves of this statement."

It continues:

"You will recall that at the December 22 conference there was no unanimity of opinion as to how this Statement should be worded. However, Mr. Colburn is quite convinced that this Statement should not include any comparisons between imported Japanese and European sewing machines with regard to the damaging effects of such imports to United States manufacturers of sewing machines. In view of Mr. Colburn's rather strong feelings in the matter we recommend approval of the enclosed Statement B."

Mr. Colburn, your Honor, was the counsel in charge of the Tariff Commission proceeding.

The statement that was inclosed and the statement that was furnished is annexed to that letter and is entitled "Statement Regarding License Agreement Between Singer and Sears, Roebuck and Company."

It says:

"It has been and is the policy of The Singer Manu- [fol. 933] facturing Company to grant no licenses to

its competitors under any of its patents. In recent months, however, Sears, Roebuck & Co. of Chicago, Illinois, a long-time reputable distributor of competitive household sewing machines in the United States, and an important customer of other products manufatured by the Diehl Manufacturing Co. (a subsidiary of Singer as more fully shown on paragraph 2 of the complaint filed herein by Singer) requested of Singer an import license under several Singer zigzag sewing machine patents, including Singer Patent No. 2,832,302. Sears, Roebuck & Co. has always been a keen but fair competitor. The cost of the specific machines requested to be licensed is represented to be such as to insure their resale in the United States by Sears, Roebuck & Co. at a fair competitive level.

"For the foregoing reasons Singer felt constrained to acquiesce to a limited extent in the request for a license. Accordingly, Singer has agreed to grant to Sears, Roebuck & Co. a license for importation of automatic zigzag sewing machines from Western Germany [fol. 934] restricted, however, to a specific model of such machine manufactured only by Gritzner-Kayser A.G. A copy of such agreement is attached hereto."

The concluding paragraph says:

"Singer has no intention to grant and on the contrary, in accordance with its normal policy, will not grant any other licenses under any of its zigzag sewing machine patents."

Mr. Gegauf's reaction to that was not that we had violated any arrangement with him, but it was a mild protest: if he shouldn't have been considered in the bargaining. By letter of March 6, 1959 he wrote to Mr. Waterman. This is Defendant's Exhibit 57:

"Owing to the fact that your complaint is mainly based on the Bernina patent we ceded to you, I take the liberty to kindly ask you why you will be granting a license for the automatic zigzag machine of Gritzner-Kayser. The Sears, Roebuck and Company might, if occasion arises, include in their sales programme

the Bernina sewing machine instead of the Gritzner-Kayser."

[fol. 935] I have missed reading the first three lines of Defendant's Exhibit 63 which I wanted to read and have been looking for. The first three lines of that letter say:

"As I anticipated, we have encountered sharp differences of opinion between your legal counsel and ours in regard to the Gegauf patents reading on our No. 89 German-made automatic machine."

The Court: Is there any evidence that Bernina had been a previous seller to Sears, Roebuck?

Mr. Pettit: No, your Honor.

The Court: Was this defendant's Exhibit 57 responded to by Waterman? Was there an answer to Gegauf?

Mr. Pettit: Responded to by Singer?

The Court: Yes.

Mr. Pettit: I have never seen one myself.

The Court: It is not in the record, is it?

Mr. Pettit: No, sir. I am advised that there is none.

Now, your Honor, I think the Sears situation shows quite clearly Singer's independence from anybody else, and there is no indication whatever as to Singer having made any agreement with anyone to do anything or not [fol. 936] to do anything.

The final group of documents relates to the elimination from the agreement of the reference to Pfaff. On May 27, 1959 a letter was written to Mr. Gegauf from Mr. Waterman Government's Exhibit 130. A previous draft of this letter dated May 21, 1959 is Government's Exhibit 129. I believe that they are identical. Government's Exhibit 130 reads:

"As we previously advised you, we have instituted a proceeding before the United States Tariff Commission in an endeavor to prevent the importation into the United States of all non-licensed sewing machines which would infringe our Gegauf Patent No. 2,832,302."

The first point to notice in this is that it refers to all non-licensed sewing machines.

> "During a recent hearing before the Tariff Commission, Singer was asked by the Commissioners if Pfaff of Germany was licensed under Gegauf Patent No. 2,832,302 so that it could freely export infringing machines to the United States.
>
> "We advised the Commissioners that Pfaff had no [fol. 937] such license, and it was not contemplated that such a license would be extended to Pfaff. However, in view of Paragraph (3) of the Singer-Gegauf agreement of December 5, 1957, our answer to the Commissioners was perhaps not too convincing."

And, your Honor, you will remember that paragraph (3) gave Gegauf the power to license Pfaff, not Singer.

> "We believe that the only way in which we can properly convince the Commissioners as to Pfaff's position in this matter is to revise Paragraph (3) of our agreement of December 5, 1957. Frankly, we think that such a revision of the agreement is quite necessary in order that we may have a better chance of prevailing before the Tariff Commission. We hope that you will have no objection to deleting Pfaff's name from our agreement."

Inclosed is the proposed form of agreement which is Government's Exhibit 131.

Mr. Gegauf answered that letter by a letter dated June 10, 1959, which is Government's Exhibit 132.

[fol. 938] He acknowledged receipt of the letter and then says:

> "As we are in no close connection whatsoever with Pfaff, we are in principal ready to conclude a new agreement with you in which all mention of Pfaff is deleted."

You will notice his statement that there is "no close connection whatsoever with Pfaff", which is a complete contradiction of the surmise made by the government that the license had been granted, and which is also a complete

contradiction of the statement made by Mr. Gegauf under oath, that we will come to later.

He says that he is in principle ready to make the agreement, but you will find that the principle has some conditions embodied.

He goes on to mention that he had "executed an agreement with Phoenix" in Germany, and he thought and our counsel thought that that agreement had related only to Germany and did not have any effect with respect to any patent that he had in the United States.

He goes on to say

> "Since the agreement between Bernina and Phoenix dated April 5, was not mentioned in our agreement with you of December 5, 1957, because of the reasons [fol. 939] outlined above, we suggest that, in order to avoid any claims for compensation of damages Phoenix might put against us, the mention of Pfaff is deleted in the new agreement, but substituted by the mention of Phoenix."

Well, quite obviously that did not solve any problem.

On June 17, 1959, a letter was received from Mr. Kirker, which is Government's Exhibit 133.

He states in the third paragraph—and this is addressed to Mr. Stanford:

> "Bernina wrote you recently about a difficulty which arose with Phoenix. You have received a copy of their agreement with Phoenix. The writer has read the agreement and is of the opinion that it concerns Germany only and not to any foreign country."

And then on page 2 he says:

> "Nevertheless Mr. Gegauf senior would not risk a litigation with Phoenix, even if there were 90 or 99% chances in his favour."

And on the last page, in the next to the last paragraph he says:

> "Mr. Gegauf explained to us that in spite of his [fol. 940] sincere wish to help Singer, he is not in

a position to take the risk of denying Phoenix the right they claim."

The net result of that, your Honor, was an agreement by Singer to indemnify Gegauf even if Gegauf was 99 per cent sure.

Then there is the draft letter, which is Government's Exhibit 135, that sets forth a proposal on that.

And then Government's Exhibit 136, the letter of July 14, 1959, addressed to Mr. Kirker, which states at the bottom of the page:

"Although we dislike Mr. Gegauf's attitude, particularly with respect to the Phoenix agreement, we presume that he is adamant about wishing Singer to assume any damages which may result if Phoenix should bring legal actions against Fritz Gegauf A.G. on the basis of the Gegauf-Phoenix agreement."

On the next page it says:

"In view of this situation we are willing to settle this entire matter in accordance with paragraph (2) contained on page 2 of your above noted letter. In order to carry out our part of this we are enclosing an indemnification letter addressed to Mr. Gegauf and [fol. 941] signed by our Vice-President and Director, Mr. Max L. Waterman. We trust that when you present this to Mr. Gegauf he will promptly execute the newly proposed Singer-Gegauf agreement as well as prepare the suggested affidavit. As mentioned in the enclosed letter, we would like to have the affidavit prepared in the English language and contain, inter alia, a definite statement that Fritz Gegauf has never extended to Phoenix any rights in and to the United States Gegauf patents Nos. 2,832,302 and 2,877,726."

As a result of this, an agreement was prepared deleting the former provision under which Gegauf had the power to license Pfaff.

This agreement is contained in the next exhibit, Government's Exhibit 139. You will note on page 2 of it that there is an elimination of the former paragraph and the

substitution of a new one which now limits Mr. Gegauf's power to sub-license Vigorelli alone—the man who had the license right even without that provision.

Annexed to this document is an affidavit prepared and signed by Mr. Gegauf. In paragraph 2 he states, referring [fol. 942] to his previous agreement with Singer:

> "In said agreement there was introduced, under paragraph 3 and at my request that 'Singer hereby agrees not to introduce, without the consent of Gegauf, legal proceedings on the basis of the said patents against Pfaff in Germany or Vigorelli in Italy but only as far as sewing machines manufactured in Pfaff's factory in Kaiserlautern (Germany) or in Vigorelli's factory in Italy are concerned.' The sole reason for provision in favor of Pfaff, was that I have since a long time very friendly personal connections with the directors of Pfaff. I definitely state that I never extended to Pfaff any rights in and to the U.S. Patent No. 2,832,302 and 2,877,726 which derive from the said U.S. applications."

On the following page, item (4) you will find the tremendous influence of that spell—that was cast upon Mr. Gegauf across 3,000 miles of ocean—he is still affected I believe it is two years later. It says:

> "At the request of Singer and for helping them [fols. 943-948] in their fight on the U.S. market, against foreign competitors, I accepted to sign, to-day, a new agreement replacing that of December 5, 1957, and which does not contain any provision in favor of Pfaff, the following paragraph being substituted in the new agreement".

That was a very strong spell cast!

The final letter is a letter to Singer from Mr. Gegauf, and it is not good tactics to comment on a bad or dangerous point—but here I note that in the last paragraph, pursuant to the order of the Court to mark in red all portions of a document that the government deems important, I find:

> "I wish you best success for the further course of your suit and remain, dear Mr. Waterman".

Now if he just remembered to refer that back to the previous Christmas letter, we would really be in a bad way!

. . . . . .

[fol. 949] New York, May 18, 1961, 10:25 A.M.

. . . . . .

[fol. 950] Mr. Pettit: Your Honor, I would also like to present one document, copy of which I have given to the government, which is offered as an aid to the Court in compliance with the request contained in a sheet that was prepared the other day. This relates only to the first portion of that suggestion, I might say. It has to do with the description of and history of the development of various sewing machines.

The Court: Yes. *I thought it would be helpful if* we had something like that before the Court as an aid to the Court in relating the testimony that has been presented and will be presented.

Mr. Pettit: If I may, I will describe what this is. On the top page there is a listing of various sewing machines, and then to the right is the page of this document where information with respect to that sewing machine is set forth. When you turn to the information itself, it is, with one exception that I will mention in a moment, solely [fol. 951] extracts from the statement of facts, so there is no controversial point in here at all.

You will find at the top of it the machines, such as the Singer Class 206 machine. Under that you will find the exhibits that refer to that machine. You will remember that there were three in each instance, and it will be the exhibit number for the machine, for the chart and for the mechanism.

Then following that will be an extract from the statement of facts with reference to the machine. Where the machine itself is described in there as distinguished from merely stating the history of it, its manufacture, sale and

so forth, that portion that is a description of the machine is underlined.

That, again, is just a help to the Court so that, when you are interested only in the description of the machine, you can find it by looking to the underlined portion, whereas, if you want to know anything else that the statement of facts says about the machine, it will be here.

The Court: Suppose we mark this simply as a Court's exhibit, it being understood that it is simply submitted as an aid memoire.

[fol. 952] Mr. Pettit: I want to make this one comment. I did say there was one exception. We have put in a statement of our own on page 11 with reference to the old design Japanese Sankyo Seiki consolidated Model 77 machine. This is referred to in a paragraph of the statement of facts but is not described, but the machine is in evidence and the paragraph concedes that it is an infringement of or it is covered by the Gegauf No. 1 patent. Therefore the description that we have written in should be noncontroversial because it merely describes the machine.

The Court: All right. We will have it marked, then, as a Court exhibit, it being understood that it is simply an aid to the Court and to counsel.

Mr. Pettit: And I will be producing subsequently additional material. I think the next one will be with respect to the patent that you asked about.

The Court: Yes.

Mr. Elkins: It is understood, your Honor, that that is not an exhibit for evidentiary purposes?

The Court: It is not an exhibit in evidence. It is simply to assist everybody.

Mr. Pettit: It is marked for identification, I be-

[fols. 952a-960] lieve?

The Court: It is marked as a Court's exhibit, but it is understood it is simply here as an aid to the Court and to counsel to locate various matters therein described.

(Marked Court Exhibit 5.)

* * * * * * *

[fol. 961] DISCUSSION OF SIGNIFICANCE OF EXHIBITS BY MR. ELKINS

Government Exhibit 33 is dated September 3, 1956, and it followed a meeting in New York between Gegauf, Jr. and representatives of Singer. We say that at that conference there was a discussion, as indicated by Government Exhibit 33, that had to do with the same subject of Gegauf transferring his patent applications to Singer in the United States.

Following that conference Mr. Gegauf says, or his company says, "We agree that something should be done against Japanese competition in your country," and in one of the previous paragraphs he talks about the suggestion of Singer that Gegauf transfer his patents in the United States to it, and obviously we say that his willing-[fol. 962] ness to agree to do something against the Japanese competition in the United States has to do with that assignment, it has to do with the conference previously held between Gegauf, Jr. and representatives of Singer.

There is no concession as to the substance of that conference between Singer representatives and Gegauf, Jr. However, previously, when the same representative of Singer sat down to talk to Mr. Gegauf only three or four months before, not as to the assignment of Gegauf's patents but as to a less important phase of this matter, namely an agreement under which each agreed not to attack the patents or the patent claims of the other so as not to narrow them, Mr. Waterman reported as to that negotiation, "One of the strong points of our argument for the agreement between our two companies is in order to fight against this Japanese competition," and I am quoting from Government Exhibit 24.

If that was the argument on April 13, 1956, if that was a basic reason for that agreement of April, 1956, it is only fair to assume that when they sat down with Gegauf, Jr. there was no change in the theme, and certainly Mr. Gegauf indicates there was no change in the theme by the parts [fol. 963] of Government Exhibit 33 which I have already quoted.

But even assuming, without, of course, admitting, that

the Gegauf statement here was, as the defendant seems to contend, meaningless as far as Singer was concerned, we note that Singer responded immediately to the Gegauf letter by a cable and also by a letter, the cable being Government Exhibit 34 and the letter being Government Exhibit 35, and in responding to the Gegauf letter from which I have just quoted Mr. Waterman writes, "We do believe that it may be possible that we can both strengthen our positions with respect to the Japanese competition which you mentioned."

After reading such communications we wonder, if later on Mr. Gegauf has the notion that he has, indeed, an agreement with Singer whereby Singer would use his patents in relation or in conjunction with his own to exclude the Japanese, whether he isn't thoroughly justified in that conclusion.

The next documents as to which defendants have made significant comments are Government Exhibits 43, 44 and 45, and the defendant's position regarding them is that they merely present an excuse to talk to Mr. Gegauf, and again it states the idea that Singer in the United States [fol. 964] was in a position to better enforce the Gegauf patent on behalf of the licensees, and they state that in relation to documents which I am about to quote.

Government Exhibit 43 is the proposed letter to Gegauf written by Stanford, and Government Exhibit 44 is the Waterman rewrite of it. They relate to a further meeting with Gegauf and plans for that meeting, and they are dated September, 1957.

In the Waterman rewrite, as we have said before, he changes the specific references to the Japanese which were set forth in the Stanford letter. The defendant takes the position that, no, he is not referring here to the Japanese when he says to Gegauf, "When I had the pleasure of meeting you last fall, we had some discussion relative to the procedures that might be followed to enforce the patents referred to in the first paragraph of this letter when issued against infringing manufacturers who primarily are manufacturers in other countries seeking markets in the United States and more and more throughout the world." "Last fall," as used by Mr. Waterman here, refers, of course, to the fall of 1956.

Government Exhibit 35, written on September 7, 1956, [fol. 965] to Mr. Gegauf by the same Mr. Waterman, relates to meeting with Gegauf, and we have just quoted it. It is the document that says that in relation to these negotiations that are going on "we do believe that it may be possible that we can both strengthen our positions with respect to the Japanese competition which you mentioned, and I hope that we can again meet and discuss our respective situations." They did, indeed, meet again. They met in the fall of 1956, and how much of a stretch of the imagination is it to say that they discussed the very subject that Waterman here in substance said he wanted to discuss?

And so, in Government Exhibit 44, when he makes his reference to the infringing manufacturers as I have quoted, he is, we say, indeed and specifically referring to the Japanese, and in that letter he states to Gegauf, "I think you will agree with me that neither one of us alone can protect himself most effectively."

We also notice that in this letter to Mr. Gegauf, we say now, that apparently Mr. Gegauf has got it in his mind that Singer is contemplating some kind of an agreement that extends beyond anything that is to be or will be in writing, and here Mr. Waterman, in writing to Gegauf, [fol. 966] after relating that Gegauf is about to receive this patent shortly and that Singer is about to receive its United States Harris Reissue patent shortly, then goes on to say:

> "We also anticipate within the near future that there will be issued to us a number of other United States patents relating to ornamental stitch sewing machines."

His reason for doing that in this letter to Gegauf is clear. Singer, of course, having a number of patents in the field, can do a better job in enforcing them if it can obtain still more, and we say that he is referring to that situation when, as I have already quoted, he went on to say that he thought that neither one standing alone could do an effective patent job.

We are concerned, as I say, your Honor, with the minds of Mr. Gegauf and of Mr. Singer and what is being created. The previous exhibit was answered by Mr. Gegauf.

in Government Exhibit 45, a letter to Waterman, in which he stated that he was looking forward to your visit in October for discussion either in Zurich or Steckborn, "regarding the mutual enforcement of our United States application and the Harris Reissue."

The defendant says that in relation to this phrase used [fols. 967-969] by Mr. Gegauf, "mutual enforcement," that it really has no meaning or, if it does, that the defendant doesn't understand what it is because it is difficult to mutually enforce patents separately.

It appears that about the best way of doing it and about the closest way that two patents or a number of patents could be mutually enforced when they relate to the same field is to put them in the common ownership, and in this case we say that single ownership is Singer. We say that is what Gegauf meant. We say that Gegauf had every right in the world, from the previous communications, from the previous conferences, to assume that that is what Singer was talking about. We say also that Mr. Waterman, the addressee of the letter, knew exactly what Gegauf was talking about; that Singer knew exactly what Gegauf was talking about. So that, when they answered the letter by Government Exhibit 46, they didn't even have to ask him what he meant.

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[fol. 970] It is not true as a legal matter that conspirators must merge their separate identities into a single thinking instrument. It is sufficient, as we say here, if their minds meet upon a common objective. It can be one objective. It need not relate to everything under the sun. Gegauf, as a conspirator, is not required to turn [fol. 970a] over all of his property to Singer without any compensation. Gegauf retains his particular identity. The common objective is there. We submit that he is joining in it, as is Singer joining in it, and that these conditions have nothing to do with the common objective except, before stepping into this common objective, certain conditions must be met.

[fol. 971] We do not insist—we do not say—we do not have to say that Singer and Gegauf merged, as we have

put it, into a single identity. They did not get merged, your Honor. We don't say that they did.

The Court: But you do say that the purpose of the Gegauf assignment and the purpose of the Gegauf agreement was a mutual purpose jointly shared in by Gegauf and Singer, that that purpose was to restrain Japanese competitors so that they can no longer sell their machines in the U. S. A.

Mr. Elkins: That's right, your Honor.

The Court: Doesn't the remark that is attributed to Gegauf on page 3 of Government's Exhibit 56, in the last paragraph, negative such a purpose? Doesn't that demonstrate that Gegauf's purpose was to get some money for themselves, that Singer's purpose was to acquire it so that they might perfect title and validity, so that their pending United States patents, they might be in a position to assert it against all infringers, including the Japanese, so that one thing that might result is not the common purpose that motivated the assignment or the agreement.

Mr. Elkins: With that, your Honor, we cannot agree. The paragraph you are referring to, I believe, begins with [fol. 972] "To this remark"?

The Court: That's right.

Mr. Elkins: We believe that Gegauf is saying that if pursuant to this arrangement with Singer, Japanese competitors can no longer sell their machines in the United States, that they will try to sell them in Europe, and that when they did come into Europe that will be a drawback for Gegauf. The picture he presents here

The Court: Gegauf says, "It will not serve our purpose to have these Japanese machines stopped from being imported into the United States when they are going to flood our own markets here in Europe."

Mr. Elkins: Gegauf sells in Europe.

The Court: "We don't want to stop the Japanese machines so far as we are concerned," Gegauf says, "from being imported into the United States."

Mr. Elkins: Oh, we disagree completely with that, your Honor. He does not say that he does not want that, and he has, we submit, stated frequently that that was the purpose.

Gegauf, as we have just said, continues to have his separate identity, and he is interested in getting money—as well as his interest in getting money, some compensation [fol. 973] for his United States patent applications.

Mr. Kirker, who, the defendant tells us, merely takes directions from Singer, said to Gegauf in the previous paragraph, "Don't be upping the price of Singer, and don't be comparing what you can get from somebody else if you license others. Don't compare what you can get from licensing to what you should expect from Singer because" as he says, "Singer would merely be in a better position for acting against common competitors."

And Gegauf's response—and still talking about the amount of compensation which he should get for what he contributes to the pool—he says:

> "Well, as we understand it, that is all fine and well, but bear in mind that if you succeed in stopping the Japanese in the United States they will come into Europe, and therefore the price that we are asking for our contribution to the pool is not outlandish."

There are other documents, your Honor, that relate to that particular situation.

Government's Exhibit No. 62 is a memorandum by Mr. Stanford covering his meeting and negotiations with [fol. 974] Gegauf. At that conference it appears, in negotiating on price, the same contention, the same idea was presented by Gegauf.

As to this matter, Mr. Stanford writes:

> "To this argument I took the position that the United States was really the first line of defense and that if the Japanese were permitted to flood the United States market with ornamental stitch machines of the Bernina or Class 401 type they would become so strong and productio would be so great that they would enter th. European market in a stronger position. I further stated that protection was to be obtained in some of the foreign countries by Geganf and it seemed that a greater risk would be involved if they did not permit Singer to try and reduce the importa-

tion of the multiple-cam machines into the United States."

I was just reading from page 7 of Government's Exhibit 62.

In Government's Exhibit No. 57, Singer, through Mr. Lightner, its president, presented on page 1 of that exhibit an idea of its own, and in regard to the price that [fols. 975-976] Singer would perhaps have to pay for the Gegauf applications, stated:

> "While this may seem high, yet over the years ahead the payment of such a price may well be justified by our having the ability to stop import of very low-priced multi-cam machines, not only as a result of the help that we would have in the U. S. market in preventing such import, but also because inability to enter the U. S. market may discourage some people from entering the field, and raise unit costs in the case of those who do produce such machines for other markets."

So we see nothing particular, your Honor, other than what we have already stated, in relation to the statement by Mr. Gegauf, and it appears, as the other documents set forth, that it was finally understood that the United States would be the first line of defense.

. . . . . .

[fol. 977] Now, Defendant's Exhibit No. 55 is a letter written by Mr. Stanford to Mr. Waterman, and it is di-
[fol. 978] rected to the Gegauf letter to which we have just referred.

In the previous documents it was certainly indicated that Mr. Waterman was quite active in Singer, particularly in relation to the Singer-Gegauf negotiations. Now we notice that the Gegauf letter to which we just referred, was referred by Mr. Waterman to Mr. Stanford, and in spite of the clear statements made by Gegauf as to the conspiracy, as we call it, Mr. Waterman did not bat an eyelash when he read it—he has been through most of

the negotiations, as the documents disclose, with Gegauf, and in relation to a statement made by Gegauf:

> "During a discussion with Mr. Heimann of the Pfaff Company, he asked me whether I believe that also the Singer Company would be prepared to help that a further gaining ground of the Japanese machine on the European market be prevented in respect of patent rights. As it seems people know already that a patent arrangement was reached between the Singer Company and the Bernina and that friendly connections are existing between our Companies,"

and he then goes on to demonstrate what that arrangement [fol. 979] was, and Mr. Waterman, in referring this to Mr. Stanford, says only "Will await your comments concerning the question raised by Mr. Heimann."

Now this memo from which I just read, by which Mr. Waterman transfers or refers this Gegauf letter to Mr. Stanford, is dated August 4, 1958.

Mr. Stanford's letter, Defendant's Exhibit No. 55, is dated August 26, 1958.

At this time, your Honor, we would like to introduce in evidence the pleadings in the case of The Singer Manufacturing Company v. Brother International Corporation —and that is a case pending in this court.

(Document handed to Mr. Wesely.)

Mr. Elkins: Our only purpose for introducing it is this: to show that on August 8, 1958 Singer for the first time is charged with a violation of the anti-trust laws in relation to the subject matter, we might say, of the Gegauf letter.

The Court: Charged by whom?

Mr. Elkins: Brother International.

The Court: They are the ones who made the complaint to the Antitrust Division, aren't they—they and their counsel?

Mr. Elkins: No, your Honor.

[fol. 980] The Court: I see no objection to that. It is received in evidence without objection by the defendant.

This is the first time that anything was ever said about

any antitrust violation by any of Singer's so-called Japanese competitors?

Mr. Elkins: That is true, your Honor.

The Court: And that is what date?

Mr. Elkins: August 8, 1958. As I say, it is merely in to show that date and to show the general nature of the charge.

The Court: No, I am not going to take the general nature of the charge. We will take it for the date, and we will take it for the fact that a pleading was interposed by Brother. I am not going to take it as any evidence of the truth of any of these allegations.

Mr. Elkins: Absolutely not, your Honor.

The Court: Because frequently it becomes a common practice, as you know—or perhaps you do not know—it has become quite a common practice to have these antitrust defenses interposed in private litigation, on the slightest pretext—and often without any pretext whatever—in order to delay or complicate the trial. That is one of the [fol. 981] serious problems of judicial administration.

Mr. Elkins: We have no intention, your Honor, of offering it to establish the truth of the assertions, but we do offer it for the purpose of showing the nature of the charge, that is all.

The Court: It is received without objection.

(Received in evidence as Government's Exhibit 198.)

Mr. Elkins: In the pleadings, Singer was charged in a counterclaim in paragraph 31, which states:

> "This Counterclaim is an action between citizens of different states for violations of the Anti-Trust Laws of the United States and for unfair competition."

Details are supplied on page 11, and it is charged that Singer "combined, conspired and agreed with others to gain control over and pool the major patents upon sewing machines, thus hampering competition and restraining trade and commerce in sewing machines and attempting to monopolize the sewing machine trade and commerce among the several states and foreign nations."

We point out, your Honor, that Mr. Stanford—or that Mr. Waterman referred this letter to Mr. Stanford on Au-

[fol. 982] gust 4, 1958; that four days thereafter the pleading was served on Singer, charging it with a violation of the antitrust laws by virtue of patents and by virtue of pooling the patents—and of course the only patents or the principal patents involved were those of Gegauf.

So it is only under those conditions that Mr. Stanford sits down to write this letter, which is Defendant's Exhibit 55, and concerning which we say it is completely, thoroughly self-serving and entitled to no probative value.

Now in Defendant's Exhibit No. 55, Mr. Stanford on the first page writes:

> "Mr. Gegauf infers that a patent arrangement has been reached between Singer and Bernina. This implies that we have some type of patent arrangement with the Bernina Company."

Now thus far Mr. Stanford agrees substantially with us—not completely. We say that not only did Gegauf infer that the agreement, the arrangement, but we say that he actually expressed it.

Mr. Stanford goes on in this letter to tell, by the way, Mr. Waterman, who, as we say, is certainly acquainted with the affairs of Singer—particularly as they relate to this [fol. 983] Gegauf matter, and tells him that Singer has an agreement with Gegauf under which neither will sue the other.

Now, your Honor, Waterman negotiated that contract—that is the contract of April 14, 1956. And when Mr. Stanford thinks, if he did indeed think, that he had to sit down and write a letter to tell Mr. Waterman, that he was not thinking very clearly—unless he had some other purpose—and that is what we say.

He then goes on to tell Mr. Waterman that Singer had designed or developed a 401 machine—as if Mr. Waterman were a total stranger—and he tells also that Singer spent money in developing that machine and in making tools for its production.

The Court: Suppose he hadn't written this letter of protestation of innocence—what they call in Italian criminal law "prostestacione"—if he hadn't written this, you would then argue, "Here, this letter of Gegauf came in and Singer

did nothing about it. They accepted his statements as true."

Now when you find that one of the executives in writing to another executive records that Gegauf is wrong, you say, "Ah, that is an indication of consciousness of guilt, of building up a defense."

[fol. 984] Mr. Elkins: We say this is a self-serving letter entitled to not one iota of probative value—that it is completely self-serving.

I can well imagine the picture——

The Court: I know we have to have the self-serving documents in a publicly-owned corporation where the government could come in, through any one of its numerous agencies, and get access to their files. If he didn't, he would not be a competent executive of a big company.

Mr. Elkins: As we say, your Honor, it was written solely for the files, that it does not——

The Court: Assuming for the best of reasons that it was written, I take it to be——

Mr. Elkins: That it was written solely for the files?

The Court: So that there would be on the record some statement of the true situation with regard to Gegauf, so that Gegauf's letter would not be misinterpreted by some subsequent investigator who might be bothered with unholy suspicions.

At this time we will take a recess for five minutes.

(A short recess.)

[fols. 985-989] Mr. Elkins: In Defendant's Exhibit No. 55 Mr. Stanford writes:

> "There are no cross-license agreements whatsoever and we have not agreed to anything concerning patents other than not bringing infringement action against Bernina."

As to the accuracy of the letter, and as to its general terms, it appears that there was a cross-license agreement, and it appears that Singer did agree to do something with Bernina or Gegauf, which is not set forth, and that is that it would not do anything to narrow the claims of any Gegauf application.

Now the Stanford letter goes on to conclude with the self-serving declaration that no other agreements exist between Singer and Gegauf.

. . . . . .

[fol. 990] The Court: Do you think that the writer of this letter, Defendant's Exhibit 55, wanted to set himself straight with the vice president so that the vice president would not think that he was so foolish as to make the agreement that Gegauf seemed to intimate had been made [fol. 991] by him?

Mr. Elkins: No, your Honor.

The Court: You don't think that he had that in mind at all?

Mr. Elkins: No, your Honor. No, your Honor. As far as putting Mr. Waterman straight, he certainly isn't doing it when he says "There are no cross-license agreements whatsoever, and we have not agreed to anything concerning patents other than not bringing an infringement action against Bernina." That does not set him straight. Mr. Waterman actually was present at practically all of these negotiations with Gegauf, the negotiations with Vigorelli. He missed on one negotiation, and that was the negotiation, the final negotiation, between Stanford, acting on behalf of Singer, and Gegauf as to which there are two exhibits, one of which was written by Mr. Lightner setting forth a policy statement for the guidance of Mr. Stanford and the other, Government Exhibit 62, a detailed report made by Mr. Stanford of his negotiations with Mr. Gegauf.

They were both directed to the attention of Mr. Waterman. Well, I know that at least one of them was directed to the attention of Mr. Waterman. I am quite sure that [fol. 992] Government Exhibit 62 was also directed to Mr. Waterman—yes, copy for Mr. Waterman, so that Mr. Waterman was very well informed. That report of the Stanford negotiations with Gegauf consists of 15 pages. As we say, Kirker, acting on behalf of Singer, said that the idea of it all was merely to put Singer in a better position for acting against common competitors.

Stanford, in this letter of August 26, 1958, which followed the formal charge of antitrust violation by Singer as

a result of these patent negotiations, now says in the bottom paragraph that it is Singer policy not to work "in concert with one competitor against any other competitor," and we say that that language which he now uses to protest innocence is practically the very same language that Kirker used, that of Singer being "in a better position for acting against common competitors."

We submit that when he received that information from Mr. Kirker when he was right on the scene with Mr. Gegauf, if he wanted to present material such as he now presents or presented in August of 1958, he should have done it at that time. However, better late than never. And now, if Mr. Stanford wants to set the record straight and wants [fol. 993] to put something in the files in relation to this Gegauf letter, he at least has the opportunity of doing it now. It is late, but nevertheless, there is an opportunity. So, after protesting the innocence of Singer, after protesting that the inferences made by Mr. Gegauf of any kind of a patent arrangement were thoroughly untrue, Stanford now picks up the spear and he writes on page 2 of Defendant's Exhibit 55 as to the type of answer that should be made to Mr. Gegauf, and there he writes:

> "My recommendation is that you simply acknowledge Mr. Gegauf's letter and say that we will inform him as to the final decision handed down by the Court in our suit against Brother."

He couldn't have said anything else in relation to the Gegauf letter because, we submit, the Gegauf letter was true, and the only kind of an answer that he recommends to Gegauf is that: we'll tell Gegauf about the outcome of our suit against Brother.

And on the final page of that exhibit, Defendant's Exhibit 55, we notice, by the way, the stenographic notation "in triplicate," and we suggest, your Honor, as we have been saying right along, that one copy was intended for a court.

[fol. 994] The Court: For whom?

Mr. Elkins: For a court. It was self-serving.

In relation to Government's Exhibit 67, which is a report of the Singer Patent Department for the year 1957, the defendant has taken the position that we have not con-

strued it properly. Relative to the Singer acquisition of the Gegauf patent, this report says in the second paragraph on the first page——

The Court: You might note, on the first page at the bottom, that the report was also typewritten in triplicate, and that seemed to be quite a custom of the Singer office. Do you see it?

Mr. Elkins: Yes, your Honor. We are only suggesting in relation to the "triplicate."

The Court: I know, but you cannot build up a chain of evidence that is going to rely on suspicion and suspicion alone because you have a rope of sand, and when you pick it up to analyze it it falls to pieces. There must be more than suspicions.

Mr. Elkins: We just referred to the "in triplicate" with the light suggestion that a copy was intended for the court because of our substantial contention that it is a self-[fol. 995] serving letter. "In triplicate" has no significance.

The Court: Suspicion clouds the mind and clouds the judgment if you pay too much attention to it. You have to find out what causes the suspicion and if there is any substance to it.

Mr. Elkins: There is no substance to the words "in triplicate."

The Court: That is fine. If I can get you to say that upon a number of other things, I would feel happy.

Mr. Elkins: We cannot say it as to anything else, your Honor.

The report, on the first page, says:

> "Steps were taken to strengthen Singer's patent position in the United States for multiple-cam zigzag stitch sewing machines by concluding an agreement with Fritz Gegauf A.G. of Switzerland, makers of the well known Bernina sewing machine, whereby a basic United States patent application relating to such machines was assigned to Singer."

We submit that the pat t position there referred to that was strengthened re ed to "multiple-cam zigzag stitching machines" and not merely to some particular machine of Singer. We say that the writer of this report

[fol. 996] has in mind that same thought when he continues:

> "Patents issuing on this application, grouped with other company patents, should put Singer in a better position in any attempt to prevent others from importing into the United States multiple-cam machines of the Singer Class 401 type."

Contrary to the defendant's construction, we submit that the thought here in both sentences is the same and that "Class 401 type," as used in the second sentence quoted, means machine carried multiple-cam machines.

We say, in addition to the conspiracy as we have been discussing it, that prior to entering into that—and, as we pointed out, the negotiations really started back in April, 1956, with the Milan meeting between Singer and Vigorelli and ultimately completed with the assignment on December 5, 1957—there was, as your Honor knows, an agreement between Singer and Gegauf. We say that the conspiracy as we described it, as we think the documents describe it, is an unlawful conspiracy, and we say now merely that it was aggravated by certain provisions in the [fol. 997] Singer-Gegauf agreement of April, 1956.

* * * * * * *

[fol. 998] As we have discussed various documents, and particularly the comments of the defendant in relation to what those documents seemingly indicate, at least indicate as far as we are concerned, the defendant's position was that in discussing the assignment by Gegauf of his U.S. applications to Singer that Singer was merely putting forward the position that, being in the United States, having a larger patent department, and Gegauf being three or four thousand miles away, that it, Singer, was in a better position to enforce the Gegauf patents of itself and for the benefit of the licensees, Gegauf and Vigorelli.

If that be so, and we say it is not, then Singer, after receiving the Gegauf patent applications which ultimately resulted in Gegauf 1 and Gegauf 2, engaged in the lowest and the meanest and the most despicable trick possible. If they told Gegauf and Vigorelli that they could enforce it

better in the United States, and if they used that as an argument or as a contention, and only that, to induce Gegauf to ultimately transfer his two patents to Singer in the United States, when Singer turned around immediately [fol. 999] and granted a license on both of them to Sears Roebuck from which it received royalties, as set forth in the agreed statement of facts, that approached $190,000 or so over a period of two years, as we say, that would have been conduct far below the ethical standards of Singer.

It is just not just, your Honor, to say to a man, "Give me your patents. I will enforce them for you, for your benefit, for the benefit of your licensees," then get the patents, grant a license under them and get in two years about $110,000 more than you paid for them. If that were the substance of these negotiations between Singer and Gegauf, such would have been a stunt to which Singer, we say, would not have stooped.

The Court: Why wouldn't they have stooped to it? They are in business to make an honest dollar from honest, legitimate business deals. Doesn't that demonstrate that Singer and Gegauf were dealing at arm's length and that Singer wanted to pay as little as it had to pay for the Gegauf license?

Mr. Pettit: Your Honor, may I just interject one statement here? He is stating a position that we have never taken, and I think that is grossly unfair. If we have taken [fol. 1000] that position, I don't know how in the world I could have taken that position, if I had.

We said not that we were enforcing this for their benefit. We said we wanted it because we could enforce it better. That is our benefit. We do not deny that they got an incidental benefit. But that we were telling them to give it to us so that we could enforce it for their benefit is not the fact.

The Court: You couldn't have enforced it at all in your suits if you didn't get an assignment.

Mr. Pettit: We recognize that they get an incidental benefit, but it was not for the purpose of benefiting them, and he ought to take our position if he is going to quote it.

Mr. Elkins: When I cited the defendant's position in relation to these documents, I thought, your Honor, that I

cited it quite accurately. I don't think it is awfully material. But, so that we may have the record straight—

The Court: Singer made money by acquiring this assignment and paying about $80,000 for it. Doesn't that negative the existence of a conspiracy?

Mr. Elkins: No, your Honor. The Singer license to Sears Roebuck related to a machine made in Germany. [fol. 1001] We say that the conspiracy between Singer and Gegauf related to Japanese competitors.

The Court: But, when Gegauf heard that Singer had done this, had given a license to Sears Roebuck, they screamed to high heaven. They said they screamed because Sears Roebuck might have been their potential customer, but maybe they also screamed because they foresaw the amount of royalties which Singer was about to collect from Sears Roebuck and they had not been declared in on it.

Mr. Elkins: There was nothing that Singer did with Sears, Roebuck which was contrary to the conspiracy between Singer and Gegauf. That conspiracy related to Japanese competition.

The Court: Well, there was nothing that Singer did with Sears Roebuck that tended to further this alleged conspiracy either, was there?

Mr. Elkins: That is true. It just wasn't a part of the conspiracy.

The Court: So Sears Roebuck has really nothing to do with this case, has it?

Mr. Elkins: Sears Roebuck and the reasons for our citing the documents and the material that we have shows, indeed, as other material shows—and we are here interested in the accuracy of our contentions, that [fol. 1002] European manufacturers were not a subject of the conspiracy between Singer and Gegauf. We submit that, if Singer granted a license to a Japanese manufacturer, it would have violated its agreement with Gegauf. We submit that Singer was free to grant a license to Sears Roebuck as long as the machines were coming in from Europe without violating that agreement, and the particular purpose of showing the Sears license and the amount of money that was obtained from it is to show that Singer had not taken the position with Gegauf, merely that it would use

the patent here in the United States to enforce it for the benefit of itself and Gegauf and Vigorelli.

[fol. 1003] The Court: Do you see what you would do? Suppose the Singer had not gotten this $190,000 from Sears, Roebuck. Then you might well begin protesting "Ha, this is an indication that Sears, Roebuck was dominated by Gegauf and that, although they had this assignment, they let these West German importations come in because Gegauf wanted them in."

Mr. Elkins: We would not have done so, your Honor. We would not have done so. Sears isn't the only one. We have presented to the court documents relating to Husqvarna, also a European, in which Singer indicated, well, at least not an unwillingness to grant a license to Husqvarna.

The Court: It evidently indicates a purpose to put them off as part of a general business negotiation while they were disposing of other important matters, not go give them a definitive declination or definitive no. That is all it indicated; just part of good business negotiations.

Mr. Elkins: Singer could have granted a patent license to Husqvarna, to Phoenix or to any European outfit, we say, without violating the agreement that arose between Singer and Gegauf.

I don't want to misquote the defendant's position, and [fol. 1004] I don't think it is awfully material what I have to say about it anyhow. At any rate, however, in referring to a government's exhibit in which Mr. Waterman said that it was agreed that Gegauf's patent attorney would set forth to Gegauf the advantages to all parties which would result from the Gegauf transfer, we thought that the defendant's position was represented with their statement, "Now, the government is not satisfied with the advantages that exist in licensees having a strong owner of a patent," and we honestly believe that they took the same position in relation to other documents of the plaintiff.

Mr. Pettit: Would you please state the page from which you read that.

Mr. Weinstein: Page 766.

Mr. Elkins: As to various documents of the defendant, your Honor, right now as to Defendant's Exhibit 1, dated

March 23, 1954, that is offered by the defendant to show as of 1954, obviously, that Singer had no interest in a device relating to a selective patent cam-control mechanism for use in conjunction with a family-type zigzag sewing machine. We are not concerned with 1954. This predates the period of the conspiracy substantially.

[fol. 1005] There is also in evidence from the defendant a letter in relation to a license between it and Vigorelli, Defendant's Exhibit 77, a letter to Vigorelli, in which Singer says to Vigorelli that it "would be interested in acquiring a non-exclusive license from you on any patent or patent application which you may have filed covering this feature."

We note that the letter is dated January 18, 1960, subsequent to the filing of the complaint in this case, and we do not believe that it has any probative value.

The other documents relating to the same subject matter which were written prior to the filing of this case did not specify that Singer was interested only in a non-exclusive license, and we submit that in January 1960, as far as this case is concerned, it is too late for Singer to be following the decision in U. S. v. United Shoe.

The defendant, your Honor, has referred to many documents which relate actually to a subject which is not in dispute between the parties, and these are documents showing that back in 1953, 1954, 1955, perhaps 1956, Singer was on thin ice in relation to the patent situation, that they were somewhat behind the parade, and they were [fol. 1006] scrambling to get on a firm footing as a result of licensing agreements with competing patent applicants. We do not oppose that in any way, and we say that Defendant's Exhibit 45, which is a patent report of Singer for the year 1958, roughly puts the situation in its proper place. This says:

> "With the subsequent acquisition by Singer of domestic and foreign rights under the Harris, Vigorelli, Messerschmitt and Gegauf patents and the ultimate issuance to Singer on April 29, 1958 of Gegauf's United States patent No. 2,832,302, our concern switched rather sharply from problems of defense to those of offense."

As I say, we agree with that at least to the extent, it not being in dispute, of the cross-licensing agreements.

The defendant referred to a document which related to negotiations with Messerschmitt. Defendant's Exhibit 95 is a memorandum to the file. It relates to a conference between Singer and Messerschmitt and it appears at that conference that Messerschmitt was interested in an allocation of territory between it and Singer, and as to this proposition Mr. Waterman said that it would present a violation of the antitrust laws and that, in substance, Singer [fol. 1007] was not interested in entering into any allocation of territory with Messerschmitt.

Our response to that is twofold, your Honor, one factually and the other legally. Singer is, it appears, the world leader in sewing machines, selling them all over the world, and it is quite obvious that it would never be to the advantage of Singer to withdraw from any section of the world. Also, on April 27, 1956, Mr. Stanford, in referring to Messerschmitt, indicated how much of a competitor it was to Singer when he stated in Government's Exhibit 71, talking about Messerschmitt, "Anyway, I am not so sure we need them or that we will wish to negotiate. Maybe we can push them out of the sewing machine game." [fol. 1008] Legally, of course, when we charge a violation such as we have, we do not believe that the government is required to show that the defendant violated every phase of the Sherman Act; and the fact that it did not grasp every opportunity, and even when the substance of the agreement would have been to its disadvantage, proves nothing.

The Court: It might be evidence of good reputation.

* * * * * * *

[fol. 1009] Discussion of Significance of Exhibits By Mr. Pettit

Mr. Pettit: Your Honor, it seems to me that we have heard here a continuous distortion of each letter in turn, and then, having distorted the letter, we hear an argument based on it. It seems to me it is quite unfair to proceed in that way, and I only want to make a comment on two or three of these letters to show the type of thing that they have done.

He refers to our letter of March 25, 1954, Defendant's Exhibit 1. This is the letter which shows that at that time Singer had no interest in acquiring a patent, a patent which, by the way, could block some of the non-infringing machines.

Mr. Elkins says with reference to this letter simply: We aren't interested in this period. Now, that is rather [fol. 1010] strange coming from a man who has as his Exhibit No. 1 a letter dated October 28, 1953, which he put in for the purpose of showing that Singer's predisposition at that time was not to litigate all over the world if it had an opportunity to make a cross-license agreement and to get the right to sell its machines royalty-free.

How is it that he passes off a letter with the statement that he is not interested in Singer's mental attitude at that time when he has the letter in five months before to show the mental attitude, a predisposition not to litigate?

He refers to Defendant's Exhibit 55, and he has read over, I suppose, six or seven times a sentence in there that is incorrect, and so obviously incorrect that no one could possibly conceive of it having been written to mean exactly what it says. He had drawn the cross-license agreement with Gegauf, he had been there when it was executed, and as Mr. Elkins well knows, Mr. Waterman was there, too. But he stresses this argument over and over again when Mr. Waterman says, "We have no cross-license agreement with Bernina."

As I suggested, it is so obviously incorrect that no one [fol. 1011] need kid himself that that letter was put in there intending to convey that impression. Who could it fool? The agreement was in writing. Waterman knew about it and Mr. Stanford knew about it.

Now, in referring to this letter he failed, I believe, to make any reference to the fact that exactly the same philosophy was set forth two years before. He says this is written solely for the benefit of the record. It was written, as a matter of fact, as a result of a request from the vice president of the company that he write it, and it happens to contain exactly the same philosophy that was expressed two years before.

The Court: I already looked at that other exhibit.

Mr. Pettit: That was not mentioned.

With reference to Defendant's Exhibit 77, a letter of January 18, 1960, in which Singer took the non-exclusive license from Vigorelli, as he did not make any reference before to the detailed examination that Singer made with reference to the merits of the machine in order to determine whether they wanted to use it, he similarly ignores any reference to that now, even though the matter appears right [fol. 1012] in the letter that he was discussing.

In this letter to Vigorelli it says:

> "And our conclusion is that we will not embody the mechanical features of the machine which you submitted to us in our present machines."

Now, obviously concluding that they would not put it in their present machines, they protected themselves by a license. But, if it is any consolation to Mr. Elkins and he would like to have it on the record, I will tell him that Singer would not run from its normal business because of this litigation and, if Singer had decided to put that mechanism in the machine, Singer would have bought it.

He refers to Defendant's Exhibit 95 and he reads from the first portion of it, and, of course, Singer is wrong whichever way it goes. When it makes clear statements showing that it does not want to violate the antitrust laws, well, then, there is also something wrong with that. That is just because it doesn't happen to do any good to violate the antitrust laws. Otherwise they would love to do it.

But he failed to point out something right after that that is in the same paragraph that he could very well have used [fol. 1013] if he cared to present the full picture. He points out another viewpoint that Singer had, and it says that agreements must be made complete and according to the truth because he would, when questioned on the completeness of the agreement, not be able to declare with a good conscience that no additional arrangements have been made.

Maybe Mr. Elkins can find some general reason that was applicable at that particular time. He didn't bother to point out the fact, and I don't know what explanation he would have for that, but there is the clear statement covering the policy of the company and Mr. Waterman's policy

that deals right squarely with Mr. Elkins' main issue in this case, and he doesn't even refer to it.

Now, your Honor, I could go along from document to document, as I promised you I will not. I am merely saying that there is not a document he refers to that is not in some way distorted or made into some misleading conclusion from it, and we have been over it once before so there is no point in going over it again.

We have here the normal situation of businessmen, having obviously quite different objectives, fighting each other at arm's length, Singer wanting the machine so that it [fol. 1013a] could enforce it against everybody, and he even asks the question—I might just say in closing—why Singer didn't write to Gegauf and tell him that Singer would not enforce the license against the Japanese. How in the world could it write a letter that it was not going to enforce the patents against the Japanese when it had every intention of enforcing the patent against everybody? [fol. 1014] Mr. Pettit: Your Honor, I would like to ad- [fol. 1015] dress myself to one point that was made as to the defendant's position.

Defendant never once has stated—and it is hard to make a statement in this long record, but certainly I do not believe that there is the semblance of a statement by us that we told Vigorelli or Gegauf that we wanted this patent to enforce it for their benefit, or that we ever once told them that we would enforce it for their benefit.

The defendant wanted that patent and told them that they wanted that patent because the defendant has a tremendous business in this country—150,000 machines against 400 for Vigorelli and 150,000 for—around 1,600 for Gegauf—that Singer could better protect itself and to enforce the patent better—and that was the reason that it wanted the patent.

Now I think we can all recognize that Singer, having the patent, certainly people would get incidental benefits, but that had nothing to do with Singer's motives or promises or purpose. Its purpose was to protect Singer.

I want to call attention to the fact that not once has the government advised this court as to what was stopped by any of these patents.

[fol. 1016] They have their drawings, they have their patents. They have our drawings. They have never once done anything except to be satisfied to talk in terms of generalities about the patents that exist.

I wonder why they have never once done anything to show the court the coverage, or possibly the lack of coverage of these very patents.

Finally, in reference to the Gegauf agreement with Singer, that cited just exactly two patents: that was the Harris patent and the Gegauf patent—or I should say applications.

There isn't a single bit of correspondence about the use of patents that does not refer to those two, and those two only. And when it talks about the use of these patents, it comes only from Gegauf.

There will not be a letter found in this whole file in which Singer spoke of using the Harris patent in conjunction with the Gegauf patent.

There is a good reason for that. Gegauf did not understand the worthlessness of the Harris patent. He therefore might have assumed, because we had these cross-licenses, that when we got the patent that would issue on his, that it could be used effectively with the Harris patent. Singer knew that once the Gegauf patent was acquired, [fol. 1017] everything in the Harris patent that would be worth a nickel would be stripped out and put in the Gegauf application and the Gegauf patent. It therefore could not talk intelligently about the use of the two together. It could not talk too frankly about the fact that it was the Gegauf and the Gegauf only—because Gegauf would attribute all the more value to it because of Singer's dire need for Gegauf No. 1.

* * * * * * *

[fol. 1018] Afternoon Session

Mr. Pettit: Your Honor, with respect to two matters appearing in this morning's record, I want to get verification.

Has the government rested?

Mr. Elkins: The government has rested.

The Court: I understand the government has rested, and I will take it that a formal motion is made by the defendant to dismiss on the grounds set forth under the rules, and the court reserves decision.

Mr. Pettit: The second, I understand him to have said—and I want to make sure that I am correct—that the government's position now is that the conspiracy commenced on April 20, 1956.

The Court: That is a question addressed to the government through the court.

Mr. Pettit: I would like for it to be so understood.

Mr. Elkins: If your Honor please, we have contented to use the language of our contentions, that it began in or about 1956, and we were no more specific than that.

The evidence would indicate that it began in the early [fol. 1019] part of 1956. It certainly was going as far as Singer and Vigorelli were concerned in April 1956, and in April 1956 there was, of course, the agreement between Singer and Gegauf under which neither one would do anything to restrict the claims of the other, to limit the patent claims of the other.

I hesitate to be any more exact, your Honor, than in 1956, I would say, April, March 1956.

The Court: I think what the defendant has in mind is this—and it is a query that comes to the court's mind—apparently it is the contention of the government that the conspiracy started first between Singer and Vigorelli around April of 1956 and at that time Gegauf was not a member of the conspiracy; is that so?

Mr. Elkins: As to that part of the conspiracy to which we directed most of our remarks this morning, having to do with the assignment of the Gegauf patent applications to Singer, it began with a conference between Singer and Vigorelli, and that that conference or the first conference, as far as we know, was in April 1956.

Following that, Vigorelli, pursuant to the request of Singer, took it up with representatives of Gegauf, and it [fol. 1020] went from there with many negotiations up to the actual assignment of December 5, 1957.

In April of 1956 there was, as I say, an agreement between Singer and Gegauf under which neither one would limit the patent claims in the applications of the other.

I do not see how we could be any more specific in relation to dates, your Honor.

Mr. Pettit: Your Honor, I do not know whether he is changing the record.

I want to make absolutely certain that I understood this morning for the first time he expressly says that the conspiracy commenced April 20th. This is not a case in which it makes no difference when it began, because whether one document is in or out affects the theory of this case, and the government's theory of this case, and that is what he has been trying to avoid from the beginning to the end.

It seems to me when the plaintiff has rested we at least ou - - t to have the right to know whether a specific document is cited as a part of a conspiracy. Now it either is or it isn't, and it seems to me a very simple question to answer, if he wants to answer it. It just is or it isn't.

[fol. 1021] We have asked that from the beginning. Does he claim that the entry into the Gegauf cross-license was a part of this alleged conspiracy?

I think, your Honor, there comes a time when the court might very well direct him——

The Court: I have my own idea as to what the government contends. I do not have much doubt about it, but so that we might remove any doubt from the record, the court will propound that now as an interrogatory to the plaintiff.

Does the plaintiff contend that the April 1956 agreement between Singer and Gegauf was an act done in furtherance of the conspiracy alleged?

Mr. Elkins: It was, your Honor, and if the court——

The Court: The answer is, I take it, yes.

Mr. Elkins: That's right, your Honor, and if the court would appreciate some detail——

The Court: No, I do not want any details.

Mr. Elkins: All right.

The Court: Just answer my interrogatory "Yes." That was what I believed to have been your position.

Mr. Elkins: I could add some enlightening details if they were considered to be necessary.

[fol. 1022] In the first place, in dealing with a conspiracy, the courts——

The Court: Let us not have details, when you have made a very definite response.

Proceed.

I do not want any more details given. You have answered yes. That is an answer to my interrogatory.

Mr. Pettit: Mr. Stanford.

JOEL GIBSON STANFORD, called as a witness by the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Pettit:

Q. Mr. Stanford, where are you presently employed?

A. The Singer Manufacturing Company, 149 Broadway, New York City.

Q. And what is your position there?

A. Patent counsel.

Q. Are you as such the head of the Patent Department of The Singer Company?

A. I am.

Q. Will you please describe that patent department, its size and its operations.

[fol. 1023] A. There are four attorneys, three patent attorneys and 19 employees in all, including draftsmen, clerks and secretaries.

Q. And how long have you been the head of that department?

A. Since 1953.

Q. And how long have you been with The Singer Company?

A. Thirty years.

Q. And did you start in the Patent Department?

A. I did.

Q. Will you please give your background, your legal education, where you graduated from law school.

A. I am a graduate engineer from the Colorado School of Mines.

I attended Columbia University in New York City and George Washington University in Washington, D. C.

I am a graduate of the latter law school.

I am a member of the Bar of the District of Columbia, and was a Patent Examiner prior to my employment by Singer.

Q. Are you a member of the Bar of the Supreme Court of the United States?

A. I am.

[fol. 1024] Q. Just in general and in a short way, will you state the operation and functions of your Patent Department.

A. The main function of the Patent Department is to avoid infringement of patents of others, to examine machines when they are being made, and to make sure that there is no patent difficulty in the way prior to the time of starting the tooling and the inventory of a machine, and the machine.

The secondary function is to take out patents.

Q. And you keep searching for patents and patent applications in general throughout the world?

A. Yes, we do.

Q. Do you have a substantial library of patents?

A. Yes, we have quite a large library of patents.

Q. In Defendant's Exhibit 12, a letter to Mr. Evans dated August 16, 1955 from Mr. Lightner, the next-to-the-last sentence says:

> "I do not know whether I can get Mr. Stanford to return to Italy just at this time for the purpose of taking part in such negotiations, but I do know that he feels that it is very important that we make progress without wasting too much time."

[fol. 1025] Do you know or can you say whether that "Mr. Stanford" is yourself?

A. It is.

Q. And Government's Exhibit 57, dated November 27, 1957, a note by Mr. Lightner addressed to Mr. Kircher, Mr. Waterman and Mr. Bruder, says:

> "I am distributing this rough draft with a view to helping get policy formulated for Mr. Stanford on Friday."

Are you the Mr. Stanford referred to there?

A. Yes.

Q. In between those times and up to and including the execution of the assignment of the Gegauf application to Singer, did you work on and in connection with conferences, agreements, cross-licensing and assignments of various kinds?

A. I did.

Q. There was a conference with Mr. Vigorelli in November, November 16th and 17th of 1955. Did you attend that conference?

A. I did.

Q. And what was your function throughout these conferences and what was your authority and duty with respect to agreements made?

[fol. 1026] A. I was the negotiator and it was my job to make the necessary instruments or documents which could be agreed to by both sides.

Q. And was it your duty to prepare all documents covering agreements made at these meetings or conferences?

A. Yes, and to pass upon them.

Q. And was it your duty to determine the form the agreements should take when consummated?

A. It was.

Q. At this conference a cross-licensing agreement was entered into, Government's Exhibit No. 11, and also Government's Exhibit 26?

Mr. Pettit: I would like to show him various exhibits from time to time, your Honor. May I——

The Court: You may take these back (indicating). I thought I was going to look at them, but you go ahead. No, I have gone through all these.

Q. I wish you would look at Government's Exhibit 11. That is the Singer-Vigorelli cross-license agreement.

A. Did you say Exhibit 11?

Q. Exhibit 11. That is the license agreement?

A. I have it now.

Q. You have that exhibit before you?

[fol. 1027] A. I have the agreement before me, yes.

Q. Did you work on the preparation of that agreement?

A. I did.

Q. And were you attending at the execution of the agreement?

A. I was present.

Q. Who else on behalf of Singer was at that conference?

A. Mr. M. L. Waterman, Dr. Lando, Mr. Evans and Mr. Faragionni of the firm of Barzano and Zanardo, who were the Italian attorneys representing Singer.

[fol. 1028] Q. In what capacity did the latter three names attend that conference? In other words, did they have any authority to represent or act for Singer at that conference?

A. I didn't quite understand you. Mr. Evans and Dr. Lando and Mr. Faragionni.

Q. Yes.

A. No.

Q. Mr. Waterman was there also representing the company?

A. Yes, he was.

Q. And with authority to speak for it?

A. Yes.

Q. You were the only two that did have authority to speak for Singer and determine the contents and form of the agreement?

A. Yes.

Q. Now will you please turn to Government's Exhibit 26, that is, the Gegauf-Singer cross-license dated April 14, 1956.

A. Yes, I have it.

Q. Did you attend the negotiations at which this agreement was reached?

A. I did.

[fol. 1029] Q. And what is the date of those negotiations? Do you remember?

A. I am sorry, sir. I cannot give you the exact date.

Q. You have the date of the agreement there.

A. Yes, I have the date of the agreement. The 14th of April, 1956.

Q. Does that refresh your memory as to when the conference took place?

A. I would say the 12th.

Q. And what about the 14th? Was that the day it was executed?

A. Yes, there was this second meeting on the 14th.

Q. Did you prepare the agreement?

A. Yes, with the help of Mr. Kirker, the Swiss patent attorney.

Q. You conducted negotiations there with respect to this agreement?

A. I did, sir.

Q. Would you turn to Government Exhibit 86, the Singer-Messerschmitt cross-license agreement dated April 16, 1956.

A. Would you give the document again, sir?

[fol. 1030] Q. That is the Messerschmitt cross-license agreement, Government Exhibit 86. That could be in another one of the binders.

A. Yes, I have the agreement now, sir.

Q. Can you state whether there was a conference in connection with that agreement and, if so, when it was held or whether there was more than one conference?

A. Yes, there was more than one conference relative to—before the signing of this agreement.

Q. Did you attend each of those conferences?

A. Yes, I attended them all.

Q. And conducted the negotiations?

A. Yes.

Q. And did you prepare or aid in the preparation of the agreement itself?

A. I did.

Q. And attended its execution?

A. I did.

Q. At that meeting was there any discussion with respect to the possible assignment by Messerschmitt of its U.S. application?

A. Yes, there was.

Q. And you engaged in that conversation?

A. I did, sir.

[fol. 1031] Q. I wish you would look now at Government Exhibit 95, the agreement between Messerschmitt and Singer dated June 4, 1957.

A. Did you say Exhibit 96?

Q. Exhibit 95.

A. Yes, I have it.

Q. That is an assignment, is it not? Is Exhibit 95 an assignment or an agreement for making the assignment?

A. 95 is the agreement.

Q. And 96 is what?

A. 96 is the assignment.

Q. Did you prepare or aid in the preparation of these agreements?

A. Yes, I did.

Q. And are they the outgrowth of conversations taking place at the meeting to which you just referred and correspondence subsequent thereto?

A. Yes, that is true.

Q. Would you please look at Government Exhibit 58, the Singer-Gegauf assignment agreement dated December 5, 1957.

A. I am sorry. I am having difficulty finding it.

[fol. 1032] Q. Government Exhibit 58, and I would also like you to refer to 59.

A. Yes, sir.

Q. Did you engage in all the conferences that took place with respect to this assignment, Government Exhibit 58, or was there one or more that you did not attend, if you remember?

A. If my memory serves me correctly, I was present at all of the negotiations leading up to this agreement.

Q. Did you prepare or aid in the preparation of the two assignments that are Government Exhibits 58 and 59?

A. Yes, I did.

Q. The second exhibit, I believe, is a short form assignment covering the same assignment contained in Government Exhibit 58.

A. Yes.

Q. Mr. Stanford, with respect to each such agreement—and I want it understood that this question applies separately and distinctly with respect to each and every one of these documents—was any agreement made by or on behalf of Singer or any promise made or did you have any understanding with or did anyone enter into any commitment or agreement with any one of the parties to any one [fol. 1033] of these agreements that is not expressed in the agreement itself?

A. No.

Q. That applies with respect to each document which you have examined and mentioned here?

A. That is correct.

Q. And with respect to each party to any such agreement?

A. That is correct.

Q. Then do I understand that each and every agreement made with any one of these parties was encompassed and appears in the agreement with that party?

A. It does.

Q. In October, 1953, a letter was written to Mr. Davidson by you, your patent department, and I would like to know whether, before that letter was written, you had received or examined any sewing machine that you can recall to your mind now.

A. This was in——

Q. October, 1953. If you cannot remember it, do not try to answer it. I just want to know if you can remember having seen a sewing machine and, if so, which one?

[fol. 1034] A. I recall we had seen at that time a Vigorelli machine.

Q. Is that the machine that has been offered in evidence here as a Vigorelli sewing machine?

A. I don't see it, sir.

Q. I show you Defendant's Exhibit 108 and ask you if that refreshes your memory as to anything that took place at that time?

A. This appears to be the mechanism which we saw at that particular time.

Q. I show you Government's Exhibit 1 and ask you if an examination of that mechanism is what caused your writing of that letter?

A. Yes, it was.

Q. Tell me, if you remember—if you don't, you are free to refresh your memory; but, if you remember, please tell me—the conclusions you reached at that time with respect to this machine and its effect upon Singer.

A. Well, at this time we were very much concerned about the 206K machine, that is, the improvement on the 206 K machine which later became the 306 machine. We were tooling up for that machine at that particular time. We were concerned as to whether or not the particular mech-

[fol. 1035] anism in the Vigorelli machine would sustain a patent claim that might be infringed by the 306 machine, that is, the mechanism that has a manual control and a con-

nection with the needle bar as well as the removable cam.

Q. May I ask whether it was a fact that the fact that the stack of cams could be removed had made this mechanism relate to the potential 306 machine?

A. The 306 machine had a removable cam which could be moved, and this had a stack of removable cams which could be moved.

Q. Could be removed?

A. Yes.

Q. And in each instance there was then a connecting mechanism that would transmit information to the needle bar?

A. Similar mechanism.

Q. Similar mechanism in each?

A. Yes.

Q. And was your problem there whether this would affect the 306 machine, whether a patent could be obtained, rather, that might affect the 306 machine?

A. Yes, that was our first machine.

Q. Did this letter have anything to do with the 401 ma-
[fol. 1036] chine or the mechanism in it as such?

A. No, not that particular letter. May I see it again, sir?

Q. There is attached to it Defendant's Exhibit 10 which you may also look at which relates to it (handing).

A. Yes.

Q. Did you conclude and advise the company that you thought there might be some doubt as to whether this could be covered by a patent in such a manner as to interfere with the 306 machine?

A. We did, sir.

Q. Where is that contained? Is that contained in item 5 there (handing document)?

A. Yes.

Q. What is the sum and substance of that opinion and advice?

A. That we thought that we could develop a defense against any claim that might be obtained on that mechanism.

Q. And did you express some thought that, if not, you might be able to obtain a license from Mr. Vigorelli?

A. We did.

[fol. 1037] Q. And what is the significance and what did

you intend the company to believe when you said that you might be able to get a license from Vigorelli?

A. Well, if they could, or if they should get a claim that would interfere with our manufacture and sale of the machines, which, of course, we were much interested in, that perhaps we could approach them—we could approach them and get a license to go ahead with the tooling up for the machine.

Q. And did you keep continuous watch on behalf of the Singer Company with respect to patents and patent applications?

A. Oh, yes.

Q. And did you write this letter of December 2, 1954, Defendant's Exhibit 4 (handing)?

A. This was prepared for my signature, yes.

Q. And you read it and signed it?

A. I did.

Q. And what was your purpose in writing that letter?

A. We wished to obtain any information that we could relative to any prior art or prior patents that might be available, and we wished an investigation to be made along those lines.

[fol. 1037a] Q. For what purpose did you want those documents? Is it expressed here?

A. So that we might use them against any patent application that we found interfered with our machines, in the hopes that we could uncover some information along that line.

[fol. 1038] Q. Was that in the hopes that you could even destroy the patent?

A. Oh, yes.

Q. And if not destroy it, limit it?

A. Yes.

Q. So far as affected the mechanisms that the Singer Manufacturing Company was using or intending to use?

A. Yes.

Q. As a result of that letter did the company or Mr. Waterman send out letters to others?

A. That is my recollection that he did.

Q. I show you Defendant's Exhibit 6 and Defendant's Exhibit 7 and ask you if those letters were written as a result of that (handing).

A. They were, sir.

Q. They are letters, I believe, to Mr. Evans in Italy and Mr. Adamson in Germany?

A. That's correct.

Q. Do you recall either Mr. Evans or Mr. Waterman—I mean Mr. Evans or Adamson-were able to obtain any information that could help in destroying or limiting these patents at that time?

A. To my recollection they weren't able to give us any [fol. 1039] information on that.

Q. And they so wrote to you to that effect?

A. They replied to Mr. Waterman to that effect.

Q. And is that covered by Defendant's Exhibits 8 and 9 (handing)?

A. Yes, it is.

Q. By December 16, 1954 had you come to any definite conclusion as to the status of the Singer 282 Experimental Machine and the prospects of its sale in various countries, foreign and the United States?

A. You mean had the company reached a position where they wished to proceed with the machine?

Q. No. Had you in the Patent Department reached any decision or determination as to what the status of that machine would be, when and if sold in foreign countries and in the United States, patentwise?

A. I believe we made a report at that time to the company.

Q. Was it contained in this letter of December 16, which is Defendant's Exhibit 5 (handing)?

A. Yes, it is.

Q. And would you please state the conclusion that you had reached. I am speaking about your own conclusion, the Patent Department's conclusion, which you had reached [fol. 1040] at that time.

A. Well, we had reached the conclusion that the manufacture and sale of the multi-cam constructions made by Singer, devised by Singer and proposed for manufacture may result in the infringement of patents issued to others.

Q. When you say "may"——

A. Well, we were relatively sure that certain patents would probably issue in foreign countries or to others, as well as in the United States.

Q. Did you think that that would have an adverse effect on the distribution by Singer of its multi-cam machine?

A. Oh, yes.

Q. In what way?

A. Well, anyone owning the patent would be able to stop the manufacture and sale of the machine which they claimed it dominated.

Q. And did you think that there was a prospect of those claims developing in the United States as well as foreign countries?

A. Yes, exactly.

Q. And was that your advice contained in this letter, particularly on page 6?

[fol. 1041] A. That is my recollection, sir.

Q. You did write in this letter your conclusion and gave your advice?

A. Yes, this was prepared and written by the Patent Department to give our advice on the status.

Q. And you gave the advice as appears on page 6?

A. On page 6, yes.

Q. And did you intend that they should understand and did you think that they did understand that this meant that they were very likely to be running into infringement in the various places?

A. Yes.

Q. That last letter is based on certain specific information that you had looked at, is that right?

A. Yes, on the machines that we had examined—the machines of others which we had examined.

Q. And was it based on any knowledge of any patent applications any place in the world?

A. Up to this time we had not uncovered any patents that it infringed, to the best of my recollection.

Q. Had you discovered any applications that gave indication that it might?

A. At the time this report was written?

Q. Yes.

[fol. 1042] A. To the best of my knowledge, no, we had not.

Q. Had you not found a Brazilian patent application in the name of Brutsch & Company?

A. Oh, yes, yes, we had. I overlooked that one.

Q. And you had found a specific machine, such as Vigorelli, Brother, is that right?

A. That's correct.

Q. And what about the application by a Swedish firm, Husqvarna?

A. Well, I would have to see the documents.

I believe at this time Husqvarna may have filed an application in Portugal or some place.

Mr. Pettit: Your Honor, most of my documents here—I am afraid I have some handwritten notes—I mean that nobody in the world can read, but I do not want to use them——

The Court: Well, if you can read your own handwriting——

Mr. Pettit: I cannot, and I am sure he can't but I mean I may be showing these to him and there may be notes here and there.

The Court: All right, show them to him—if he hasn't seen them by now, that is strange. My clients always saw [fol. 1043] my notes. Go right ahead. Don't be worried about those things. Those things are natural in the preparation of trial. The only thing is be sure Mr. Elkins doesn't have those notes before him when he is cross-examining him.

Q. And did you, subsequent to that and in or about sometime before April 26, 1955, become aware of and examine another Vigorelli machine?

A. About that time, yes, we saw the second Vigorelli machine.

Q. The first Vigorelli machine that you saw had the stack of cams and a follower that could be moved lengthwise to the axis of the cam?

A. Yes.

Q. With means of retracting the follower from the cam?

A. Yes, shifting from one cam to the other.

Q. Shifting from one cam to the other?

A. Yes.

Q. Now the next mechanism varied from that, I believe; is that correct?

Mr. Elkins: We object, your Honor, to the leading question.

Mr. Pettit: I will withdraw it.

[fol. 1044] Q. What was the mechanism of the second machine that we are talking about, and how did it differ from the first one?

A. Why, the second machine was capable of sensing two cams simultaneously and transmitting the information to the needle bar.

Q. Was it still capable of following a single cam?

A. It was.

Q. But in addition it could track two adjacent cams?

A. Two cams simultaneously.

Q. Was that on the first machine that you had seen, other than our own, that had the capacity to take information from two cams at once?

A. That is the first machine that I had seen other than our own.

Q. Were you at that time aware of any patents owned by Vigorelli with respect to either or both of these mechanisms?

A. Well, I can't pinpoint that, sir, without the necessary documents.

Q. I show you a letter dated April 25, 1955 to Mr. Waterman and by yourself, Government's Exhibit 2 (handing). [fol. 1045] A. Yes. At this time we had located the Vigorelli-owned Italian patents which showed these two machines.

Mr. Pettit: I am sorry. Will you repeat the answer, please.

(Answer read.)

Q. At that time did Singer have pending a so-called or so-known Johnson application?

A. Yes, it was filed in '54, as I recall.

Q. What was the respective situation between Vigorelli and his patents and the Johnson application with respect to priority?

A. Johnson had developed his machine or conceived it and developed it in the United States before the filing date

of the Italian patent of Vigorelli relating to the sensing of two cams simultaneously.

On the other hand, Vigorelli had filed an application in Italy, the one that we had, which was before the filing date of the Johnson application in the United States.

Q. Was there not an Italian patent that related to the stack of cams and a single follower?

A. Yes, there was.

Q. Was the Italian patent *prior* to any patent that John-
[fol. 1046] son could get on that particular mechanism—a stack of cams with a single follower?

A. Yes, he had an earlier filing date than Johnson's conception date in the United States.

Q. And is it right, then, to say that with respect to that mechanism, the stack of cams and a single follower, as of that time, Vigorelli would have been prior to Johnson and ahead of Johnson both abroad and in the United States?

A. On the single cam follower, yes.

Q. On the single cam follower.

Now with respect to sensing information from two adjacent cams at the same time—that is what the second Vigorelli patent did, was it not?

A. Well, it was capable of doing that, but it took information from two cams simultaneously.

Q. Were they not two adjacent cams?

A. Yes, the mechanism showed that they were two adjacent cams.

Q. With respect to the idea of taking information from the two cams, was that idea also embodied in the Johnson application and in the 401 machine?

A. Yes, Johnson could take it from adjacent cams or any two cams in the mechanism.

[fol. 1047] Q. They each embodied the idea of taking information from two cams at the same time?

A. Yes, that's right.

Q. With respect to priority on that particular idea, will you state what the situation was as between Vigorelli and Singer.

A. In the United States, so far as the sensing of two cams simultaneously was concerned, Johnson had an earlier conception and reduction to practice.

In foreign countries, Johnson was behind in his filing date.

Q. Then was the situation—I want you to correct me if I am wrong on this; I want to see whether I have gotten what you said correctly—was the situation that Vigorelli would be ahead of Singer in the United States and abroad on the stack of cams and a single follower, and would be ahead of Singer abroad on sensing information from two cams at the same time?

A. I am sorry, sir, I did not quite follow the question.

Q. Then will you state to me what the situation was with reference to the priority both in the United States and abroad on a single follower and a stack of cams.

[fol. 1048] A. Vigorelli was ahead on the single follower and the stack of cams, both in the Unted States and abroad.

Q. And with respect to the taking of information from two cams simultaneously, will you state that situation.

A. In that particular situation Vigorelli was ahead of Johnson abroad but we felt that we were ahead in the United States.

A moment ago I said that we had a reduction to practice before the filing date of Vigorelli.

I want to correct that impression. It was a conception date, showing a drawing.

Q. But the net result was that Vigorelli could preclude our machine from practically all countries of the world except in the United States with respect to two followers?

A. Yes.

Q. And even though two followers couldn't be used without Vigorelli's consent because he had or would have had priority in the United States on the single follower and a stack of cams?

A. That's correct.

Q. Which had to be incorporated in the 401 machine [fol. 1049] before you could even put the second follower on it; is that correct?

A. Yes, it would be necessary to have a selection before you could have a second.

Q. And on that situation, did you write to Mr. Waterman this letter dated April 26, 1955, which is Government's Exhibit 2 (handing)?

A. Yes, we wrote this, sir.

Q. And is the information which you have just given or any part of that information set forth in this letter to Mr. Waterman?

A. It is set forth on the last page.

Q. Contained on the third page?

A. Yes.

Q. And what portion of that information is set forth there?

Mr. Elkins: May I examine this, please.

(Document handed to Mr. Elkins.)

Mr. Elkins: All right.

The Witness: May I have that question back, please.

(Question read.)

A. On the last page, page 3.

[fol. 1050] Q. And the substance of that advice relates to which portion—the stack of cams and a single follower or the two followers, the two cams?

A. Well——

Mr. Pettit: If Mr. Elkins has any objection to that letter I wish he would state it. Otherwise I wish he would sit down.

The Court: You make him nervous.

Mr. Elkins: If your Honor please, the reason I did want to see the exhibit is because——

The Court: You have a perfect right to look at any paper.

Mr. Pettit: I will show you this exhibit but sit down (handing).

The Court: He says he doesn't like you looking over his shoulder—and, frankly, I wouldn't like it if I were examining a witness.

Suppose we take a five-minute recess and we will all feel better.

Mr. Elkins: If your Honor please, when counsel gives an exhibit to the witness with a note on it, I would like to see what the witness is using for his answer.

The Court: You have a perfect right to see it.

[fol. 1051] Mr. Elkins: The note of the document.

The Court: Everything. No doubt about it. But he gets nervous when you stand so close to him.

(A short recess.)

By Mr. Pettit:

Q. Mr. Stanford, I understand that this letter was the advice to Mr. Waterman with respect to the prior art of Vigorelli and Singer relating to the sensing of information from two cams.

A. Yes.

Q. Did you shortly thereafter learn of the existence of the Harris patent in the United States?

A. We did.

Q. And did you ascertain what this Harris patent contained?

A. Yes, we did.

Q. Were there disclosures and claims?

A. We looked it over and found that it disclosed the idea of a plurality of cams with a single follower but it had not claimed it.

Q. And as you understood it, under the law was there anything you might do about it if you obtained the patent? [fol. 1052] A. Anyone who purchased the patent could reissue it within a certain length of time with broadened claims or claims directed to that subject matter.

Q. So long as the disclosure was in the application?

A. Yes, as originally described.

Q. The ability to do that was not in any way limited to Singer, was it?

A. No, anyone who purchased the patent.

Q. Anyone from Europe, anyone from Japan, or anyone from any place else who purchased it or reissued it or tried to get it reissued with the claims concerning the disclosure made?

A. That's correct.

Q. Did you talk to Mr. Waterman concerning that?

A. I did, and recommended that he purchase the patent.

Q. What were the objects or object if there is only one—I might better say "purpose" in purchasing this patent?

A. We wanted to reissue it with broadened claims so that if possible we would have protection for machines

that we were going to make here in the United States, and we also thought it would be of value for any trading pur-
[fol. 1052a] poses if we wanted to use it as such, and also that there was a possibility that we would have an opportunity to learn of any earlier-filed application relating to the same subject matter.

[fol. 1053] Q. Would you consider it would be of any advantage even if you found you could not get a patent on it?

A. Yes, we thought that we would have an opportunity to learn what others had, and at least, if we couldn't get a patent, well, maybe someone else couldn't get a patent either.

Q. When you referred to obtaining broadened patents, what did you mean by "broadened patent"?

A. Broadened patents means covering the subject matter—in this case covering the subject matter disclosed but not claimed.

Q. In the patent itself?

A. In the patent itself.

Q. So you were speaking about broadened claims compared to the claims that originally existed in the Harris patent.

A. That is correct.

Q. Did you have any concept that you could get any claim beyond these disclosures of the Harris patent?

A. Well, you couldn't. You would have to limit your claims.

[fol. 1054] Q. Did you have any intention whatever or any desire to try to get claims that were beyond those disclosed in the Harris patent?

Mr. Elkins: Object, your Honor, as leading.

The Court: Yes, it is leading, but we will permit it. You may answer.

A. Why, we had no intention of trying to claim anything other than actually was in the patent or commensurate with the state of the art at that particular time.

The Court: Is the original Harris patent in evidence?

Mr. Weinstein: Government's Exhibit 170, your Honor.

The Court: I don't like to interrupt you but, while we are on this, I would like to follow it through.

Mr. Stanford, will you examine the Harris original patent, Government's Exhibit 170, and point out the disclosure as set forth in the patent as issued and then take the Harris Reissue patent, Government's Exhibit 172, and point out to me the claim by number and the wording by line of the broadening which you say was obtained by [fol. 1055] the Harris Reissue?

Mr. Pettit: Your Honor, you would have to find that in Gegauf No. 1. That has been taken out of the Harris.

The Court: Oh, excuse me.

Mr. Pettit: You see, that claim that was put in the Harris had to go out of it.

The Court: Give him the application for the reissue. That should be in there.

Mr. Weinstein: That is Government's Exhibit 173 (handing to witness).

The Court: You would have to direct yourself to the patent as it issued, the first patent?

The Witness: The first Harris patent had four claims, and the patent itself disclosed a plurality of cams and a single cam follower.

The Court: Where is that in the patent?

The Witness: As it is shown?

The Court: Yes.

The Witness: The cam follower is——

The Court: No, I don't mean on the figures. I mean under the recitation, in the body of the patent itself.

The Witness: Your Honor, do you wish me to point [fol. 1056] out——

The Court: Just by line.

The Witness: By line.

The Court: That's right.

The Witness: It says on line 11, page 1 of the specifications, "means for automatically reciprocating the spindle comprising selecting one of a series of cams (29) mounted on a shaft (30) journal in an auxiliary frame which includes suitable bearings (31)."

The Court: And you say that that disclosure was not set forth in any claim in the patent as issued?

The Witness: Well, the disclosure of selecting one of the cams in an embroidery machine or in an embroidery producing machine, a zigzag machine, which permitted you to

select one of the cams was not put forward or was not set forth in the claims as drawn.

The Court: All right. Now show me where, in the application for the reissue, Exhibit 173, that claim was originally set forth, this additional claim. What claim number is it?

The Witness: It has been cancelled. As I recall, it was claim 21, sir.

The Court: Claim 21 on the application for the reissue [fol. 1057] as filed?

The Witness: It is the one that was put in interference with a suggestion to Mr. Gegauf in his application.

By Mr. Pettit:

Q. Would you look at claim 22, please, and claim 19?

A. Yes, I have 20 and 22. I was mistaken about claim 21 being put in interference.

Q. Will you look at claim 19?

A. Yes, I have claim 19 and claim 22.

The Court: And are those the claims, 19 and 22, in the Harris Reissue application which were intended to cover the disclosure of the original specifications—of the specifications in the original Harris patent as issued?

The Witness: Yes, claim 19 was originally allowed by the Patent Office, and then they subsequently rejected that, and it was modified and became, as I recall, claim 22.

The Court: All right.

By Mr. Pettit:

Q. And do you know the difference between claim 19 and claim 22, the substance of the difference?

[fol. 1058] A. Not without a careful comparison of the claims. As I recall——

Q. Don't guess at it.

A. Not without actually comparing the claims could I give you the exact difference.

Q. At any rate, claim 19 was first allowed. Was it suggested to Gegauf as a claim for interference?

A. It was.

Q. And did Mr. Gegauf accept it?

A. I would have to see the patent application of Mr. Gegauf, but I assume that he did.

Mr. Pettit: I think the government will concede that. Will you not, Mr. Weinstein and Mr. Elkins?

Mr. Elkins: We do.

By Mr. Pettit:

Q. That 19 was first suggested to Mr. Gegauf and accepted by him and was subsequently withdrawn by the Examiner?

A. That is correct.

Q. And you therefore prepared, or the office prepared, claim 22.

A. Yes, the Patent Office prepared claim 22.

Q. And was that subsequently suggested to Mr. Gegauf for interference?

[fol. 1059] A. It was.

Q. And did he accept that interference?

A. He did.

Q. While we are at it, I will just cover that. The claim, then, that was in interference with Mr. Gegauf in the Patent Office was a claim which the Singer patent department had itself drafted and prepared in all respects?

A. Yes, that is true.

Q. And that applies both to claim 19 and claim 22?

A. Yes, sir.

Q. At the time that you acquired this Harris patent, did you obtain anything else from Mr. Harris along with it?

A. There were some foreign patents that corresponded to the U.S. patent.

Q. And did you acquire all foreign corresponding patents?

A. All corresponding foreign patents.

Q. I show you Government Exhibit 3 and ask if you would recognize the listing on page 7 and be able to state whether those foreign applications were included?

A. Yes, they were included in the assignment of the [fol. 1060] Harris U.S. application.

Q. Upon acquisition of that patent, how promptly did the Singer Patent Department file its reissue application?

A. As soon as possible.

Q. I show you a letter of June 16, 1955, Defendant's Exhibit 11, and ask you whether, if you look at that, you can tell if it was filed by that date. Does it refresh your memory in any way?

A. Yes. The U.S. application had been filed at the time this letter was written, almost contemporaneously with this letter, as I recall.

Q. At the same time did you write to Italy for the purpose of obtaining any information with respect to your relative rights with Vigorelli in Italy?

A. We did.

Q. What were you concerned with then? What did you want to know?

A. We wanted to know what effect the Italian patent had, whether or not, because it predated Vigorelli, it could be said to dominate Vigorelli or be in a position of covering the common subject matter.

Q. And when you said "it," are you referring now to the Harris Italian?

[fol. 1061] A. I am talking now of the Harris Italian patent.

Q. And if that were so, would that change the entire situation with respect to Singer and Vigorelli?

A. Yes. Under those circumstances Harris would have been ahead of Vigorelli and would be entitled to cover the common subject matter.

Q. Did you ask about the Italian law?

A. Yes. We asked first whether or not the patent could be amended in any way or whether it was necessary to amend it.

Q. And couldn't be amended, even standing as it was?

A. It would be considered a dominant patent over Vigorelli.

Q. This Defendant's Exhibit 11 dated June 16, 1955, is that a letter that you wrote to Italy with respect to that, to Dr. Lando?

A. Yes, it is.

Q. Did you receive a reply to that letter?

A. We did.

Q. What did you consider the reply meant? When you received it, what did you conclude that the Italian law was [fol. 1062] with respect to this matter?

A. Well, first, it could not be modified, but it was not necessary in that the claims of the subject matter of the Italian patent was of little or no consequence to the court. An examination of the patent determines just what it covers.

Q. You mean the subject matter of the claim or the subject matter of the patent?

A. The common subject matter between two interfering patents. In Italy there is just a registration system with no examination; just register your patents over there.

Q. I think you said the subject matter of the patent. Did you by any chance mean the subject matter of the claim was immaterial?

A. The subject matter—I am sorry. The subject matter claimed in the patent is immaterial.

Q. But the subject matter disclosed by the patent and the description is what is important?

A. Yes.

Q. Is this the letter you received in reply (handing)?

Mr. Elkins: What exhibit number is that?

Mr. Pettit: That is Defendant's Exhibit 129, a letter [fol. 1063] dated June 22, 1955, to Mr. Stanford.

A. Yes, we received this letter, sir, or I received it.

Mr. Pettit: Your Honor, in connection with this, I would like to call attention to the stipulation that is agreed to and that has been marked in evidence relating to——

The Court: On the foreign law?

Mr. Pettit: Yes.

The Court: I have read it over.

By Mr. Pettit:

Q. As a result of your correspondence and your advice to Singer was any discussion had with respect to what should be done by Singer? I am talking about within the Singer organization now.

A. Yes. I recommended that an approach be made to Vigorelli to see if we could iron out the patent difficulties that obviously were going to arise because of the conflicting patents that existed.

Q. Did you speak to Mr. Lightner in reference to that matter?

A. I did, sir

Q. Before this letter was written did you discuss with Mr. Lightner Defendant's Exhibit 12 or did you draft it [fol. 1064] or have anything to do with this exhibit, a letter dated August 16, 1955, to Mr. Evans from Mr. Lightner?

A. Why, I discussed it with him. I did not draft this letter. I discussed it with him.

Q. Did you discuss it with him before he wrote it?

A. Yes.

Q. And did you approve the letter as written?

A. No, I did not approve this letter, sir.

Q. Did you see the form of it before it went out?

A. I don't recall whether I saw this form or not.

Q. What was the subject of your discussion with Mr. Lightner?

A. I thought that we should approach Vigorelli so as to make some form of cross-licensing agreement so that we would be free to manufacture our machines where they might have patents and they would in turn be free to manufacture and sell machines where we might have patents.

Q. Did you see a copy of this letter after it was sent to Mr. Evans (handing)?

A. I am sure that I did, sir.

Q. Does this set forth the substance of your suggestion [fol. 1065] to Mr. Lightner as you understood it?

A. It does.

Mr. Pettit: This, your Honor, is the letter which states, if I may read just the one sentence——

The Court: You don't have to read it for my information. However, if you want to, you may.

By Mr. Pettit:

Q. Do you know whether Mr. Lightner received a reply to that letter?

A. If I recall he did, sir.

Q. After that, did you take up with Mr. Lightner the question of writing again to Mr. Evans?

A. Yes, I did, sir.

Q. I show you Government Exhibit 5, a letter of September 9, 1955, from you to Mr. Lightner, and ask you to look at that letter and tell me whether you had seen a draft of the proposed letter from Mr. Lightner to Mr. Evans?

A. I had.

Q. And did you discuss it with him in any way or did you write to him about it or telephone him about it?

A. I addressed this letter to him.

Q. This was the letter with reference to the proposed [fol. 1066] draft.

A. Yes.

Q. In this letter you, I believe, suggested an addition. You say that you were opposing an application of Brutsch, and after this you say:

> "With this in mind you may feel that it is desirable to add a further paragraph to your letter to the effect that it might be well for Mr. Evans to tell Vigorelli that we have definite knowledge that at least two other well known sewing machine companies are attempting to acquire in many foreign countries patent claims which would adversely affect Vigorelli as well as ourselves, and perhaps Vigorelli and Singer standing together rather than apart could more effectively prevent these other firms from acquiring claims which might be detrimental to both Singer and Vigorelli."

Now will you state what you had in mind as to the things that might be done to prevent others from acquiring claims?

A. First we wanted to at least be in a position to talk to Mr. Vigorelli, and, second, we wanted him to know that perhaps he was not first as others had patent applications, [fol. 1067] pending, and by banding together, standing together and not apart, I meant to reach an agreement, if possible. Standing together meant reaching an agreement, or apart meant not reaching any agreement.

Q. Did Mr. Lightner write this letter, then, of September 12, 1955, Government Exhibit 4 (handing)?

A. Yes, he did.

Q. This is the letter of which you had seen the draft?

A. That is correct, sir.

Q. On page 2 it states:

"Unless we are able to come to some agreement with Vigorelli, we will, of course, institute proceedings in Italy in due time seeking to invalidate such patents as Vigorelli has received, and we will do the same thing in France and other countries in accordance with the proper procedure in each country."

Will you please state what you had that would enable you to invalidate or limit Vigorelli's claim in Italy, if anything?

A. We had the Harris patent which was prior to Vigorelli's patent on selecting of a single cam.

Q. Then did you think that it was quite possible that you [fol. 1068] could be ahead of Vigorelli in Italy on the single follower and the stack of cams?

A. We were ahead, yes. We felt that the common subject matter of the two rightfully belonged to Harris.

Q. And as a result of that, if you got into conflict, that concept you could obtain and keep in your patent rather than have Vigorelli have it in his?

A. Yes.

Q. That is, between the two of you, the common subject matter you believe is yours.

A. That is correct.

The Court: Which, of course, you wanted him to believe anyway as a good bargaining point.

Mr. Pettit: More than that.

The Court: I wouldn't try anything more than that. Let's be realistic about this.

Mr. Pettit: Your Honor, Mr. Harris was ahead of him.

The Court: I know.

By Mr. Pettit:

Q. Was that situation the same, then, in France?

A. Yes, in both countries. Part of the civil law, as I understand it. In both instances it isn't the claim; it is the subject matter shown in the patent.

[fol. 1069] Then is it correct to say that you had the idea and that you did have a chance of being ahead of him as far as that particular idea was concerned in both countries?

A. In both Italy and France.

Q. The Court suggested: didn't you want him to believe it anyway? Is that correct?

A. Of course. We would be definitely trying to get an opportunity to talk to Mr. Vigorelli.

Q. And this was all written to Mr. Evans with the objective merely of getting a conference with Mr. Vigorelli to discuss the patent in question?

A. Yes, so we could explore the situation.

The Court: Prior to this time had you ever entered into any licensing agreement whatsoever with Vigorelli?

The Witness: No, sir, we didn't even know Vigorelli. Mr. Evans did but we did not.

The Court: Evans was your attorney representing you, was he?

The Witness: Yes, he was the one in charge—yes, your Honor. He was the one in charge of the Italian company.

The Court: But this is the first time you ever entered [fol. 1070] into any patent or attempted to enter into any patent negotiation with Vigorelli?

The Witness: That is correct, sir.

By Mr. Pettit:

Q. At the bottom of that paragraph it states:

> "We, ourselves, hold some patents and have patent applications pending which would make trouble for Vigorelli if we were engaged in litigation with him or which would greatly strengthen and broaden the patent situation if our position and theirs could be pooled by some mutual agreement."

Did you have some understanding or belief as to what that meant when you read it, to you?

A. Well, we had, first, the Harris and Johnson—the Harris application and the Johnson application here in the United States that we certainly felt would make trouble for Mr. Vigorelli, and we also had a French and a British patent which we thought he was infringing.

[fol. 1071] Q. You more than thought; you were sure?

A. We knew that, yes.

Q. That he was infringing?

A. Yes. Of course it could not be determined until suit was brought, but in our opinion it was an infringement.

Q. Therefore you had not only the two patents in Italy and France but you had the Johnson application applying to the taking of information from two cams and you had the fact that he was infringing two of your patents?

A. Yes, that's correct.

Q. And did you think that they were strong bargaining points in your favor?

A. Well, certainly we thought they were bargaining points, yes.

Q. And then you wanted to present them?

A. Oh, yes, if necessary.

Q. Now it says here: "We ourselves hold some patents and have patent applications pending which would make trouble for Vigorelli if we were engaged in litigation with them, or which would greatly strengthen and broaden the patent situation if our position and theirs could be pooled by some mutual agreement."

[fol. 1072] Had you talked with Mr. Lightner at all at any time either in connection with the prior letter or this letter as to the type of agreement that you thought advantageous?

A. Yes, I talked with him with reference to the first one.

Q. When you read this did you have your own ideas as to what was meant by this pooling of agreements?

A. I did.

Q. And did that come into your conversation with Mr. Lightner?

A. I do not know that it sprang from the conversation but I had the idea that in this particular case, it meant if we had a patent in Italy and he had a patent in Great Britain, that we would cross-license each other and in effect we would both be operating under each other's patents.

Q. Well, had you ever heard Mr. Lightner use the word "pooling"—to pool?

A. I can't say that I had, sir. I don't recall that.

Q. On October 10, 1955 Mr. Waterman received a letter from Mr. Evans, I believe—this is Government's Exhibit 8. [fol. 1073] I would like you to look at that letter (handing), and tell me from it, if you can, when you received the first

information with respect to any possible Gegauf application or patent relating to the multiple-cam mechanism.

A. Well, the cablegram came from Italy and apparently the cablegram was sent on the 7th, and it told us for the first time that Vigorelli and Bernina were currently negotiating regarding a patent on the plurality of cams.

Q. In the meantime, you had had some writing in trying to arrange a conference with Mr. Vigorelli, is that not correct?

A. That's correct.

Q. And this cable that is set forth in this letter of October 10th was then the first information received by Singer in any form as to possible patents or patent applications by Gegauf?

A. That's correct.

Q. And am I correct in saying that even at this time you knew nothing of the details other than that it related to a multiple-cam mechanism?

A. That is all—just covering a plurality of cams.

Q. Do you know when you first received any informa-[fol. 1074] tion as to the priority date of the Gegauf patent or patent application?

A. It was sometime after this. We immediately tried to get some information in regard to it because we were very much surprised that there was a patent of Gegauf.

Q. I show you Defendant's Exhibit 14 and I ask you if that was the first information Singer had received showing priority date of a Gegauf patent (handing).

A. Yes, to the best of my knowledge this is the first information we had received giving the date of deposit in Switzerland of the Gegauf patent.

Q. And even as to this date you had not received a copy of the patent itself, had you?

A. No, we had not.

Q. Do you know when you first received a copy of Gegauf's Italian patent?

A. It was sometime shortly after this letter which you just showed me was received.

Q. I show you Defendant's Exhibit 17, a letter dated October 24, 1955, addressed to Mr. Waterman from Mr.

Evans (handing) and I ask you if that will indicate to you [fol. 1075] when you received the patents from Italy.

A. Well, this indicates that the Bernina patent was being mailed from Italy on the date that this was written.

Q. And that is what date?

A. And that was October 24, 1955.

Q. By the Bernina patent in Italy, you are referring to the patent that actually existed in Italy and not to the Swiss patent; is that correct?

A. Yes, we were talking of the Italian patent of Bernina—of Gegauf.

Q. So that you still had not seen the basic-owned patent of Gegauf in Switzerland?

A. No, no, we had not seen that.

Mr. Pettit: Your Honor, if it suits your convenience, I think I would like to call it a day.

The Court: All right. I made a note in my diary for ten o'clock—is that all right for you gentlemen, tomorrow morning?

Mr. Pettit: Ten o'clock tomorrow morning?

The Court: Is that all right?

Mr. Pettit: Yes, sir.

(Adjourned to Friday, May 19, 1961 at 10.00 o'clock a.m.)

[fol. 1076] IN UNITED STATES DISTRICT COURT

UNITES STATES OF AMERICA

vs.

THE SINGER MANUFACTURING COMPANY

New York, May 19, 1961, 10 A.M.

JOEL GIBSON STANFORD resumed.

Direct examination continued.

By Mr. Pettit:

Q. Mr. Stanford, I believe we reached a stage where you had mentioned the receipt of the letter of October 24, 1955, Defendant's Exhibit 17, and you had stated that the Italian patents were being mailed—the Italian Bernina patents were being mailed, copies of it.

I show you that exhibit (handing witness), and ask you if you can refresh your memory on that or if you already know, you may testify on that. Had you received the cable before that, stating that they had been mailed?

A. Yes, we did. We received a cable saying that the Italian Bernina patent was being mailed.

Q. What steps did you take on receipt of that information?

[fol. 1077] A. Well, we immediately instituted a search in Washington to determine whether or not we could locate an assignment in Washington. We wanted to know whether or not a patent application had been filed in the United States and simultaneously with that we started to extend our investigation to other countries to see if we could get back of the date of the Bernina patent.

Q. I show you Defendant's Exhibits 19 and 21 and ask you whether Exhibit 19 was written in order to obtain that information (handing to witness)?

A. Yes, it was written to Mr. McKinnon in Japan, in charge of the Singer Company in Japan; and Exhibit 21 is is in reply or an acknowledgement of the letter, stating that investigation was being made.

Q. Did you receive a series of letters thereafter reporting on that investigation?

A. We did, sir.

Q. What was the result of that investigation?

A. They were unable to locate any further information in Japan that would be of any help to us, which was earlier than the filing date of the Gegauf patent.

Q. I show you Defendant's Exhibits 22, 23 and 25 (hand-
[fol. 1078] ing witness), and ask you if those are replies that you received as a result of that request?

A. They are, sir.

Q. And what was your conclusion as to the possibility of invalidating or limiting the claims that you were worrying about with respect to the 401 machine?

A. After reading—after receiving those letters we concluded that we had no anticipatory material which would antedate the filing of the Gegauf patent, and that as a consequence Gegauf being nine days ahead of the Harris patent, we were in serious difficulties with our 401 machine here in the United States.

Q. Now you proceeded with your negotiations with Mr. Vigorelli?

A. We did.

Q. Did you have a conference on November 17, 1955, Mr. Stanford?

A. I am not sure of the date but we did have a conference, sir.

[fol. 1079] Q. I show you Government's Exhibit 11 and ask you if that was the agreement signed at that conference.

A. Yes, this is the agreement signed at that conference.

Q. Mr. Stanford, I wish you would look at the agreement, the portion of the agreement beginning with "Each of the two parties mutually agrees not to institute" and state your then understanding of the meaning and purport of that provision and its objective.

Mr. Elkins: I object, your Honor.

The Court: Overruled.

Mr. Elkins: The agreement speaks for itself.

The Court: Overruled.

A. Why, the agreement brings out that——

Q. Mr. Stanford, I asked you for your then understand-

ing of the meaning of that agreement. I wish you would state your understanding of its purport and effect.

A. That we would not institute any opposition or nullity proceedings in countries in which that could be done, but any interference proceeding or priority determining proceeding would be carried on in accordance with the laws of the country involved.

Q. Do I understand then that you conceived that the "provided" clause dealt with United States proceedings [fol. 1080] and Canadian proceedings?

A. Yes, that's correct.

Q. Is there any place else that you know of that that clause could be applicable?

A. I know of no other place where interference or priority determining proceedings are applicable.

Q. And was it your concept and belief that the previous clause related solely to countries in which there were opposition and nullity proceedings?

A. Yes.

Q. What was your understanding as to the rules, laws and regulations of the Patent Office in the United States with respect to the conducting of priority proceedings?

A. A claim is taken from one of the interfering patents and suggested to the other interferent, giving him the opportunity to either make the claim or not make the claim, depending upon the circumstances, and it is not a requirement that he has to make the claim but he is given the opportunity to. After that is done there is a period in which preliminary statements as to the date of priority have to be filed. These preliminary statements are not opened until after the motion period. During the motion period, if [fol. 1081] you do not agree with the claims that were suggested in interference, you have an opportunity to take any action that you feel is desirable.

Q. Had you understood that at the time of the execution of this agreement?

A. Yes, sir.

Q. Had you taken a draft of this provision to Italy with you when you went there?

A. Yes, we had.

Q. Is the portion of it that is in English a provision that corresponds with the draft that you took with you?

A. It was, sir.

Q. Did you intend thereby to give up any of your rights in priority proceedings in the United States?

A. None whatsoever.

Q. Upon the execution of this agreement, Mr. Stanford, do you know whether there was any suggestion made to Mr. Vigorelli that this agreement might not be mentioned or should not be mentioned to Mr. Gegauf?

A. I believe there was mention of that. Yes, sir, I think there was mention of that.

Q. Was any agreement made with Mr. Vigorelli with respect to patents referred to in here for their use or non-
[fol. 1082] use, not embodied in this agreement?

A. No, sir.

Q. Was there any discussion at any time of a Japanese competitor?

A. No, sir.

Q. Was there any agreement that you would or would not license anybody?

A. No, sir.

Q. Any agreement that you would or would not restrict the full ownership of your own patents in any way?

A. No, sir.

[fol. 1083] Q. I show you Government's Exhibit 10——

Mr. Pettit: Your Honor, I might state that there is a little confusion here because——

The Court: No confusion.

Mr. Pettit: —I am giving to the witness documents that have no notes on them.

The Court: Go right ahead.

Q. I show you Government's Exhibit 10 and I ask you if the handwritten notes appearing there are yours (handing witness)?

A. Yes, this is my writing.

Q. You state in this "Fairweather tells me our British opposition against Vigorelli would have failed. Am glad we have agreement".

Who is Mr. Fairweather?

A. Mr. Fairweather was one of the partners of Cruik, Shank, & Fairweather, our British patent attorneys.

Q. And did Mr. Fairweather give you this advice that is reported here?

A. He did, sir.

Q. You state further that "Vigorelli claims or states that Bernina has filed an application in the U.S. corresponding to their early filed Italian patent. If this be so, maybe Harris Reissue should not be pushed too fast. [fol. 1084] Something to think about."

Why did you suggest the Harris Reissue should not be pushed too fast?

A. Well, if Gegauf had filed a patent application in the United States and if we pushed the Harris patent too fast, we might have shown our hand to Vigorelli—excuse me, to Mr. Gegauf, at an inopportune time, so it would seem best to delay the action so that we wouldn't give our position away to Mr. Gegauf—to the Bernina Company.

Q. Your position being what?

A. The date of priority on what would not only be the filing date of the Harris patent application but also any other information that we got in an interference with them and had to file a preliminary statement.

Q. Were you rather anxious about the fact that he had a nine-day priority to your application, that that not be disclosed to him?

A. Oh, yes, we were quite concerned over that.

Q. Why was that? Did you want to negotiate with him having that knowledge or without it?

A. We wanted to negotiate with him without him having that knowledge because if he had that knowledge he would [fol. 1085] have been much more difficult to deal with.

Q. I note that this handwriting note of yours is written on the back of another letter, a letter dated November 14, 1955, to Dr. Wiegand.

I would like you to read the first paragraph of that document (handing witness).

A. (After examining) Yes, I have read it, sir.

Q. Will you tell me whether you had given any instructions to Dr. Wiegand with respect to what he should do at the German patent office?

A. Yes.

Q. And what were those instructions?

A. Well, before we had the conference with Vigorelli I

talked with Dr. Wiegand, who was the German patent attorney of the Singer Company, and asked him to go to the German Patent Office and talk with the examiner concerning our pending Johnson and Perla applications, and in so doing find out whether or not the German examiner had any art which we were not familiar with—in other words, whether or not he had any prior patents that we were not familiar with.

I was seeking further information, and also that he deliver to the German examiner any references which I had given to him of which the German examiner did not have. [fol. 1086] I realized that the Patent Office was located in Munich, and that the Patent Office in Berlin had been destroyed and some of the older patents may not be in the German examiner's possession, and I wanted them in the German examiner's possession.

Q. And you requested him to give to the German examiner all the prior art which you had?

A. Yes, which he did not have and which we did have.

Q. And did this letter from Dr. Wiegand to you cause you to come to the conclusion that he had done that?

A. That was my understanding.

Q. In or about the middle of January, 1956, did you make any discovery with respect to Gegauf in his situation in the United States that stirred you into action?

A. We located an assignment in Washington which recorded the assignment of a Gegauf patent application, and judging from the dates on that we concluded that Gegauf had filed a United States application corresponding to his Swiss patent application.

Q. Now is this the first information you had that led you to believe that Gegauf in fact had filed an application in the United States?

[fol. 1087] A. This is the first concrete information that we had that such an application had been filed.

Q. As a result of that did you write this letter of January 19, 1956, Government's Exhibit 16, to Mr. Waterman (handing witness)?

A. I did, sir.

Q. I wish you would state what the conclusions were that you drew at that time as to the Singer situation and as to what should be done.

A. Well, we had just been unofficially advised that our application had claims in it that were ready for allowance and that we felt that an interference might be set up with Mr. Gegauf, and we recommended that immediate action be taken in an attempt to reach some agreement with Mr. Gegauf as to the patent situation so that we could feel that we were free to go ahead in the United States with our 401 machine, which was the basis of our production here in the United States.

Q. Did you so advise Mr. Waterman?

A. I did.

Q. *Did you state there that the Patent Office had unof*ficially advised you that your claims were allowable?

[fol. 1088] A. That is in the letter.

Q. Well, is that a fact?

A. That we were unofficially advised?

Q. Yes (handing witness).

A. "Several weeks ago the U.S. Patent Office unofficially advised us that the claims of our U.S. Harris Reissue patent application are allowable over the known issued patents."

Q. Then your information was such that you believed that if Gegauf had filed a claim he would obtain a patent on that claim that covered your 401 machine?

Mr. Elkins: May I ask that the question be repeated, Mr. Reporter.

(Question read.)

Mr. Elkins: Your Honor, this is a leading question.

The Court: It is leading. You can ask him—frame it another way—"Did you believe".

I would permit that because you are entitled to elicit from this witness categorical denials of the alleged wrongdoing. Therefore you may lead him to the extent of draw-
[fol. 1089] ing his attention to the specific charge, for the purpose of securing a categorical denial.

Mr. Pettit: Your Honor, in further defense, I want to point out that most of these letters are set forth in the statement of facts, and therefore——

The Court: Well, technically, the way the question is worded, it is leading.

I suppose that in view of the fact that you charge the

defendant, and specifically this witness acting for the defendant, with wrongdoing——

Mr. Elkins: That is right, your Honor.

The Court: He is on the stand and as part of his direct examination the examiner is entitled to elicit categorical denials of the charge of wrongdoing, and those questions are naturally leading, to the extent that there is a statement of the charge and he may inquire directly as to whether or not he had the purpose of accomplishing the alleged wrong.

I think in view of the nature of the charge I am going to permit leading questions of this nature which are intended to secure categorical denials or admissions.

Mr. Elkins: If your Honor please, if the questions related [fol. 1090] to the essence of the government's contention at all times, that would be one thing, but we get in on the periphery as to facts which are not specifically within the government's contentions, and as to those we do not believe that the witness should be led.

The Court: Well, when we come to those instances we will ask the examiner not to lead the witness, but on this specific question the objection is overruled.

Read the question to the witness and we will take his answer.

(Question read as follows:)

"Q. Then your information was such that you believed that if Gegauf had filed a claim he would obtain a patent on that claim that covered your 401 machine?"

A. I believe that if the claim which was allowable in the Harris application was suggested to Mr. Gegauf and that he made the claim or copied the claim, that it would be allowable.

[fol. 1091] Q. I will read to you one passage from this letter and then ask you a question concerning it. It states:

> "In view of this situation, we would strongly recommend that this company attempt to work out with Bernina an agreement along the lines of the Vigorelli-Singer agreement. Our chances of negotiating such an agreement with Bernina would be greatly enhanced if we could approach them before any patent interference is declared. At the present time we feel that

we have more knowledge concerning this entire situation than does Bernina. Thus, up until the time that such an interference is declared, Singer would be in the better bargaining position with Bernina, for after declaration of the interference Bernina would, as a matter of course, be given access by the Patent Office to our Harris Reissue patent application and then would know that its application has an effective filing date nine days earlier than our Harris application."

Mr. Stanford, is that the meaning you intended to convey by your handwritten note that I read to you a few minutes [fol. 1092] ago about withholding certain patents? Is that the same principle, the same philosophy?

A. The same principle, the same philosophy.

Q. You wanted your company to conduct their bargaining with the advantage of Bernina not knowing your priority date, if that were possible?

A. That's true.

Q. Did Mr. Waterman thereupon seek to obtain any information with respect to the Vigorelli-Bernina agreement?

A. He did.

Q. And do you remember the information that the company desired?

A. I can't remember it entirely, no, sir.

Q. I show you Government's Exhibit 17, a letter dated February 6, 1956, to Mr. Baumann, and ask you to look at that.

A. Yes, I have looked at it.

Q. Was the company seeking information there? For what purpose did you want the information?

A. Before you——

Mr. Elkins: Excuse me, sir.

If your Honor please, I don't know whether that document given to the witness to refresh his recollection has, [fol. 1093] indeed, refreshed his recollection. I did not get his answer as to whether or not it did. I just want to know whether he is testifying now from a recollection refreshed or whether he is testifying from a past recollection recalled or whatever it is.

The Court: Don't you think that would be a proper sub-

ject for your cross-examination and that the proper way would be to make a little note of it on that yellow pad before you?

If this is an objection, it is overruled. The witness may answer.

A. Would you repeat the question, please.

(Question read.)

A. Whenever you anticipate bargaining with anyone, you wish to obtain all the information that you can relative to the subject, also relative to the individual that you are going to dicker with. The more information you have, the more or the better position you are in to carry on your negotiations.

Q. Can you state now or will you state now the various bits of information that you wanted?

A. We wanted to know why the monetary consideration had fallen from the sum of $160,000 or 16 million lira to nothing and why there was no monetary consideration, and [fol. 1094] we also asked for the names of the officials of the Bernina Company, who they were, and also who were—the location of the offices of the principals that Vigorelli did business with or carried on these negotiations with.

Q. And was a reply received to that letter?

A. There was, sir.

Q. This document which is Government's Exhibit 19, a letter of March 3, 1956 to Mr. Waterman from Mr. Baumann, is that the reply (handing)?

A. Yes, it is.

Q. And that incloses, I believe, a report from Dr. Lando?

A. Yes, there is a translation of a report from Dr. Lando attached to Mr. Bauman's letter.

Q. Would you turn to the first page of Dr. Lando's report, please. It says:

> "After having underlined with Mr. Vigoelli the advantages of the agreement with Singer as revealed in the Harris case, fully recognized by Vigorelli, I proceeded to ask him what were the reasons which caused the change in Bernina's attitude."

When you read that letter, did you have any understanding or belief as to what was being referred to [fol. 1095] there?

A. Well, I felt that Vigorelli, by this time

Mr. Elkins: I object, your Honor. This has to do with the thinking of the defendant as prompted by a letter written in February 1956, written by Dr. Lando, and the document speaks for itself. What he thought does not seem to be competent, your Honor.

The Court: As to what he thought and how he interpreted that letter and what actions it inspired in him or led him to take, that is material.

The objection is overruled. That, I understand, is the purpose of this question.

Mr. Pettit: Yes, your Honor. I want to show——

The Court: All right. I think I know what you have in mind.

A. At this time Mr. Vigorelli must have been notified by——

Mr. Elkins: Objection, your Honor. "At this time Mr. Vigorelli must have been notified."

The Court: Are you telling us what your reactions to this letter were when you read it?

The Witness: Yes, sir.

The Court: That you came to the conclusion that Vigorelli must have been notified?

[fol. 1096] The Witness: Notified by the Patent Office——

The Court: That is what you intended to say?

The Witness: Yes, sir.

The Court: All right.

A. —notified by the Patent Office of the interference with the Harris application and that he had realized that he was not in a position to make the claim which was suggested to him by the United States Patent Office.

Q. And do you know, Mr. Stanford, whether, several months before that, he had in effect abandoned his claim with respect to this by failing to meet the date suggested by the Patent Office?

The Court: No. Did you know, when you received this letter, that Vigorelli had already abandoned by default his right to object?

The Witness: No, I didn't know that.

The Court: You did not know that.

The Witness: I didn't know that.

Q. I would like to show you Defendant's Exhibit 59 and Defendant's Exhibit 60 dated respectively January 23 and February 6, 1956, and also Defendant's Exhibit 58, and ask you if that refreshes your memory in any respect.

A. These are letters from——

[fol. 1097] Mr. Elkins: I object. The answer is not responsive. The question was, as I recall, do these refresh his recollection.

The Court: Yes, that's right, but let's not be too technical. We don't have a jury here.

Do those letters refresh your recollection as to this matter of Vigorelli's abandonment?

The Witness: They do, sir.

The Court: With your recollection refreshed, do you want to change any testimony that you have given?

The Witness: I believe that I, a moment ago, said that I did not know whether or not the claim had been made. I see by the stamp here that we received a letter on February 16, 1956 which shows that the claim was suggested and that Mr. Vigorelli had until February 24th to make the claim, otherwise he could no longer make the claim.

Q. Did you make any suggestions to Mr. Waterman as to what should be done with reference to the Gegauf situation in about March of 1956?

A. Yes. I suggested that we proceed as rapidly as possible.

Q. On what basis did you suggest that they proceed?

A. I cannot recall the basis at the moment, sir.

[fol. 1098] Q. I show you Defendant's Exhibit 28, a letter signed by you, addressed to Mr. Waterman, dated March 8, 1956, and I ask you to state whether that refreshes your memory as to what took place at that time.

A. It does. I wrote a letter to Mr. Waterman with a proposed letter to Mr. Winteler in Switzerland and in it I said that the proposed letter—in the letter to Mr. Water-

man I said that I thought that the letter of Mr. Lightner to Mr. Evans is a very excellent letter along this line and it simply called for the granting of immunity with respect to the claims of the patent rights of both parties to the other so that each could be free to go ahead with the manufacture and marketing of the machines.

Q. What letter of Mr. Lightner's was that?

A. That was the letter of August 16, 1955 to Mr. Evans.

Q. And you were suggesting then the cross-license arrangement?

A. The possibility of a cross-license with Mr. Gegauf along the same lines as the Vigorelli-Singer agreement.

Q. At that time did anyone in the Singer organization [fol. 1099] know Gegauf or any of the personnel in Gegauf's organization?

A. Not the American company. I don't know whether Mr. Winteler knew him or not, but he probably had met him. There was no close tie-up.

Q. Was your suggested letter to Mr. Winteler?

A. Yes, the proposed letter was to Mr. Winteler.

Q. And that was the proposed letter, the draft, that was annexed to this Defendant's Exhibit 28?

A. Yes.

Q. As a result of that was a conference arranged with Mr. Gegauf?

A. It was; not as a result of this letter, but of another letter written by Mr. Waterman.

Q. You did have correspondence and a conference was arranged?

A. Yes.

Q. When did that conference take place?

A. Sometime in the spring of 1956.

Q. Do you remember the exact date?

A. No, sir, I couldn't give you the exact date of it. I believe it was sometime in April.

Q. I show you Defendant's Exhibit 30 and Government's Exhibit 24 and ask you to look at those and see if they [fol. 1100] refresh your memory as to the date of the conference.

A. Yes, sir. This was on the 12th of April 1956. It was a conference with Gegauf at Steckborn, Switzerland.

Q. And did it take place on the 13th or 14th or both?

A. I think that the conference was on the 12th, sir.

Q. When did you sign the agreement?

A. I believe that was the 14th.

Q. Will you please state what took place at that conference and the conversations that took place.

I would like for you to cover rather thoroughly the various subject matters discussed. If you need any documents to refresh your memory, you can have them.

A. I would like to have the document which you just showed me, sir.

(Documents handed to the witness.)

Mr. Elkins: Is the witness using a document to refresh his recollection, and if so, what document is it?

Mr. Pettit: Defendant's Exhibit 30 and Government's Exhibit 24.

Q. You can add to that Defendant's Exhibit 31 (handing).

[fol. 1101] The Witness: Please repeat the question.

(Question read.)

A. We——

Mr. Elkins: Your Honor, I think we have a right to know whether the documents have refreshed the recollection of the witness.

The Court: You will cross-examine him on that. That is a matter for cross-examination, don't you think? Apparently the witness at this stage is looking at a paper, and that is obvious because he is doing it in front of us.

Mr. Elkins: And the record will show that?

The Court: If the record does not show that, you make sure that it shows it because the stenographer won't put it down unless you embody it in a question. You, being an experienced and able trial man, know that that is the proper procedure.

A. We arrived in Steckborn in the morning, and Mr. Gegauf was quite interested in showing us his plant. He was very proud of it, so we spent the morning going through the plant. The reason he wanted to show us through in the morning was that materials were very hard to get and he was only able to work on a short shift. So,

after going through the plant, we had lunch and started the [fol. 1102] discussions in the afternoon, in the early afternoon, and we discussed sewing machine problems in general, the Turissa machines made in Switzerland and also the Helvetia machine which was made there, and we discussed various situations in the sewing machine field.

We got around to talking about the Japanese competition, and Mr. Gegauf expressed concern over it, and we, of course, used that—having that opportunity, used that as a lever to say that we felt that we shouldn't be fighting amongst ourselves, that it would only delay the issue of the patents, and that we would be wasting our time and energy fighting each other, and that we should go ahead and get our respective patents so they could be enforced by whoever would own the particular patent.

Present at this meeting was Mr. Gegauf and Mr. Gegauf, Jr. and some of the members of his company, and a patent attorney for us, Mr. Kirker, and also Mr. Waterman and Mr. Winteler.

We could not talk directly with Mr. Gegauf because Mr. Gegauf doesn't understand English, and unfortunately I do not understand German, so that all the conversation had to go through Mr. Kirker. First I would say to Mr. [fol. 1102a] Kirker the things that I wanted him to say to Mr. Gegauf and then Mr. Gegauf would in turn say to Mr. Kirker in German what he wanted to convey to us. [fol. 1103] This took quite a long time, and it is very slow when you have the problems of language barrier.

So the conference lasted quite a long time and ultimately they requested us to go down to Lake Geneva and look it over while they prepared a statement of intention, as they call it. It was a statement in which they set forth their ideas of just what should be in any agreement between Singer and Mr. Gegauf.

After getting this statement of intention——

The Court: Then you went to Geneva, did you? You went to see the lake?

The Witness: We went to see Lake Constance——I am sorry, Lake Constance. Steckborn is on Lake Constance.

The Court: Suppose at this time we take a recess for about five minutes.

(Recess)

The Court: You last told us you went over to the lake.

The Witness: Yes. We went over to the lake and when we returned they had prepared this, what they call a declaration of intent. And Mr. Gegauf throughout the entire proceedings seemed to be very suspicious of Singer, [fol. 1104] and he took the position that his situation was much superior to ours, "otherwise you would not be here" —in effect—"Why are you here?"

And he seemed to feel that we wanted to copy his machine.

The Court: What gave you the impression that he was suspicious of Singer? What did he do or say?

The Witness: Well, he said that he had a very fine machine and he did not want anyone to copy it, and he wanted a special provision, that is, if he entered into this agreement with Singer, that we would not make a copy of this machine.

The Court: This was all conveyed to you through Kirker as the interpreter?

The Witness: Yes.

The Court: Go ahead. What else happened there?

The Witness: After we talked with them and they showed us this declaration of intent and we departed for Zurich, Mr. Kirker going along with us, we—Mr. Kirker and I, discussed the matter of drawing up an agreement with Mr. Gegauf—and I tried to conform as much as possible [fol. 1105] along with this so-called declaration of intent.

Now the day before we went to see Mr. Gegauf I had talked with Mr. Kirker, and I had taken up with him the question of whether or not he felt that the Swiss Bernina patent was infringed by Singer, and whether or not the material that we had brought over, anticipatory material was good, and he had advised Singer that it was his opinion that it was highly desirable that we enter into an agreement with Gegauf so far as the Swiss patent was concerned.

We had not seen the Swiss patent until we got Mr. Kirker to get it from the Swiss Patent Office, and he showed it to us.

Mr. Kirker and I then proceeded to draw up an agreement which finally became the agreement which was signed between Gegauf and Singer.

Q. Now, Mr. Stanford, you said that Mr. Kirker advised you that it would be highly advisable that you enter into an agreement with Gegauf.

I do not know whether you used the word "highly". He said it would be advisable to enter into an agreement with Gegauf. Did he advise you as to your relative positions, [fol. 1106] as to the validity of the Gegauf patent?

A. Oh, yes, he definitely advised me as to the validity of the Swiss patent and his opinion that it was valid.

Q. And that was the basis of his advice?

A. Yes, so far as the Swiss patent was concerned.

Q. Did you aid in the preparation of this cross-license agreement with Gegauf, Government's Exhibit 26?

A. I did, sir.

Q. I show you paragraph 1 (handing witness), and ask you if you drafted those provisions?

A. (After examining) Yes, I did.

Q. Now will you please state your belief as of that time as to the meaning and purpose of the provisions you have in paragraph 1.

A. Well, in certain countries you can bring nullity and invalidation proceedings and oppose patent applications. In certain countries they make those provisions and——

Mr. Elkins: If your Honor please, the paragraph 1 referred to in Government's Exhibit 26 plainly speaks for itself. There is no ambiguity whatsoever [fol. 1107] in it.

The Court: It does not appear to be, but I am going to let the witness answer it.

Mr. Pettit: Is the government conceding that it means just what we say in there? Because I can stop this testimony if he does, if he says——

The Court: There is no need of making any comment. I made a ruling. The witness can continue his answer.

Mr. Elkins: We will be happy to say that the meaning is clear.

The Court: No, no—sir?

Mr. Elkins: We are happy to concede that its meaning is very clear, without having elucidation by a witness some five years later as to what it says, if that is——

The Court: No, we have had enough of this. Let us have the witness' answer. We will make better time.

Go ahead.

A. (Continuing) The obvious intent of it——

Q. Mr. Stanford, I asked you as to your conclusions and beliefs as to the purpose and meaning of those clauses at that time.

[fol. 1108] A. My conclusion was that it applied only to foreign countries which had special provisions which permitted you to restrict the scope of claims of the patent.

Q. And was that your intention as to the meaning of the clause when you drafted it?

A. It was.

Q. And that is what you believed it referred to when you finished with it?

A. That is correct.

Q. Now with reference to the second portion of that paragraph, will you state your belief at that time, as to what was intended by it and as to what it would accomplish?

A. Well, that is directed to countries which have interference or priority determining proceedings, and in this particular case we put that in to take care of any situation which required a priority determining proceeding and it would be in accordance with the laws and regulations of the Patent Office concerned.

Mr. Elkins: If your Honor please, the defendant is using a document either to refresh his recollection or to read from—I am not quite sure which. At any rate, he has it before him as he testifies, as to the meaning of the con-[fol. 1109] tract, which is Government's Exhibit 26.

May I inquire as to what the document is to which he just referred in giving the meaning of Government's Exhibit 26?

Mr. Pettit: I object to that statement. The witness is not giving the meaning of the paragraph. That was not the question that he was asked—and we will get to that later.

Mr. Elkins: If it might be described——

The Court: Mr. Elkins wants to have identified for the record the document or paper that the witness looked at.

Will you tell us what paper you have before you that you looked at as you testified?

The Witness: I have a memorandum (handing to the Court).

The Court: The witness has before him Defendant's Exhibit 31.

What else? Did you look at anything else?

The Witness: The agreement (handing to the Court).

The Court: Government's Exhibit 26.

[fol. 1110] (Witness hands to the Court.)

The Court: Government's Exhibit 24.

(Witness hands to the Court.)

The Court: And Defendant's Exhibit 30.

(The Court hands back to the witness.)

The Court: Had you completed your answer? I think you had.

Q. Now was it your intention or expectation that thereby you would be surrendering any of your rights in interference proceedings in the United States?

A. No.

Q. Did you write a memorandum about the time this agreement was executed in which you mention these paragraphs?

A. Yes, I did.

Q. What document is that?

A. Defendant's Exhibit 31.

Q. Would you please designate or state what paragraphs in that memorandum deal with this paragraph of this cross-license agreement?

A. Page 2, the last paragraph and the first part of page 3—the first paragraph of page 3.

Q. Does that include the first full paragraph on page 3?

[fol. 1111] A. Not the first full paragraph. The first part of——

The Court: The sentence that you refer to, does it read "The only countries in which this clause or paragraph has any direct bearing is in Germany and Sweden"?

The Witness: Yes, your Honor, that is.

The Court: All right.

The Witness: I should, however, say—I neglected to put

in Japan here because there was a patent application pending in Japan.

Q. Now I do not know whether I understand your answer with respect to the first full paragraph on page 3.

A. It dealt with the first part of paragraph 1 of the agreement.

Q. Did it deal with the first part of paragraph 1—do you have it in front of you?

A. The agreement?

Q. Yes.

A. "Singer and Gegauf each undertakes not to do anything, either directly or indirectly and in any country, the result of which might restrict the scope of the claims of the other party relating to the subject matter of the above [fol. 1112] mentioned patents and patent applications."

Q. Which paragraph is it in your memorandum that deals with that?

A. The paragraph beginning on the bottom of page 2 and ending on the top of page 3.

Q. And what paragraph in your memorandum deals with the second part?

A. The first full paragraph on page 3.

Q. Mr. Stanford, when this agreement was entered into did you in connection therewith or anybody else in behalf of Singer enter into any agreement that is not expressed within this document, Government's Exhibit 26?

A. Not to my knowledge.

Q. Did you agree with Mr. Gegauf or anybody else on behalf of Singer that you would prosecute or use any patent that you had in any manner?

Mr. Elkins: I object to that, your Honor.

The Court: Overruled.

Mr. Elkins: The question asks the defendant as to the actions of other people representing Singer.

The Court: Yes, whether he agreed.

Mr. Elkins: And it also relates, as I understand the [fol. 1113] question, to anybody else in Singer, whether anybody else in Singer——

The Court: Did you agree? Did you make such an agreement?

The Witness: No, sir.

The Court: Do you know of anybody else in Singer having made an agreement, had such an agreement been brought to your attention or knowledge?

The Witness: No, sir.

The Court: Anybody connected with Singer ever tell you of such an agreement?

The Witness: No, sir.

The Court: Did you ever in the course of your business affairs down at Singer, going through the files or going through the records at any time, come in contact or have brought within your observation or knowledge the record of any such agreement?

The Witness: No, Sir.

Q. Mr. Stanford, I would like to know whether any agreement was made with respect to licensing any patent that you might own or obtain?

A. No, sir.

Q. Either as to whether you would or would not license anybody?

[fol. 1113a] A. No.

Q. Following the execution of this cross-license agreement, did you have a conference in Milan?

A. Yes, we went to the Milan Fair.

Q. And whom did you have a conference with and under what circumstances was it called?

A. Mr. Vigorelli—Mr. Vigorelli asked to see us when we were there.

[fol. 1114] Q. What was his purpose in calling that conference, as expressed to you at that time?

A. He wanted to discuss some problems, as I recall. I am sorry, sir but I can't give you——

Q. I show you Government's Exhibit 27 and call your attention to the second paragraph in that exhibit. Does that refresh your memory, Mr. Stanford?

A. It does.

Q. Will you please answer the question, then.

A. Mr. Vigorelli felt that now that Singer and Vigorelli and Bernina had an agreement we should act in concert with each other, and we promptly told Mr. Vigorelli that that would just be impossible, that we could not make any such agreement to take any action whatsoever, that any

action that was taken would have to be taken by the respective parties.

Mr. Vigorelli was also concerned about some infringements of his patents and we told him that we could not discuss those matters with him, that that was his own problem.

Q. Did you state that Mr. Vigorelli thought that now that Singer and Bernina and Vigorelli had made an agreement; is that what he presented to you?

A. Did I state that?

[fol. 1115] Q. Did you state that?

A. Yes, I stated that.

Q. Do you mean that he thought that an agreement had been made or is that what is reflected there?

A. No. Vigorelli and Singer had made an agreement and Singer and Bernina had made an agreement, and he felt that having arrived at those agreements we should thereafter act in concert.

Q. Did he make any reference to those being or constituting a common agreement?

A. No, he did not. No common agreement. It was three separate agreements.

Q. I ask whether he referred to it as being a common agreement.

A. No, he did not refer to it as being such.

Q. Before the execution of the cross-line agreement with Mr. Gegauf had there ever been any conversation with respect to a purchase or a possible purchase or a transfer or a possible transfer of Mr. Gegauf's application to Singer which had been carried on with Mr. Gegauf?

A. Any mention made to Mr. Gegauf?

Q. Yes.

A. No, no mention had been made to Mr. Gegauf of any [fol. 1116] possible purchase of his patent.

Q. So that at the time that he signed the agreement he had not heard a suggestion or mention even of the possibility of the transfer of his application to Singer?

A. No, he had not.

Q. And was that fact recorded by you in a memorandum that you prepared?

A. The last paragraph on page 6 of Defendant's Exhibit 31.

Q. That was a memorandum prepared by you, was it?

A. Yes, that was prepared by me on——

Q. On what date?

A. April 15th, the day after the agreement with Mr. Gegauf.

Q. Do you know whether a similar memorandum was made by Mr. Waterman?

A. On this date?

Q. No, at any time near this date.

I show you Government's Exhibit 27.

A. I have that before me, sir.

Q. I ask you to turn to the second page of that document.

A. Yes. In paragraph 2 of this memorandum prepared [fol. 1117] by Mr. Waterman.

Q. So both you and Mr. Waterman were in agreement that neither of you had mentioned anything about the possibility of transfer?

A. Yes, that is true.

Q. At this conference in Milan. I wish you would state what was said with reference to the subject matter set down in the second full paragraph on page 2 of Mr. Waterman's Memorandum, being Government's Exhibit 27.

A. We had a language barrier here in that we could not talk with Mr. Vigorelli because he spoke only Italian and we did not speak Italian. So the conference was with Dr. Lando, Mr. Waterman, Mr. Baumann, myself and Mr. Vigorelli and his attorney, Mr. Magnoni, and I think young Mr. Vigorelli was also present, as I recall.

As the discussion was more or less over, Mr. Vigorelli's attorney, Mr. Magnoni, came over and said to me that he would like to speak in English to me. He had apologized that he spoke very little English, but he did very well, and he asked me about the situation here in the United States between Gegauf and the Harris patent, and I said that they would probably be locked in interference very shortly; that Gegauf was ahead of us and that I was [fol. 1118] very much afraid that Gegauf was going to win the interference, that I was sorry because I felt that if we had the claims and were able to keep them in the Harris patent, we would be able to enforce them better than could Vigorelli if he had a patent——

Q. Vigorelli?

A. I beg your pardon. I mean Gegauf—if he had a patent. I said that we had not broached the subject to Mr. Gegauf because we thought that if we ever did, why, the price would go sky-high and there would be no chance of reaching any agreement.

So he immediately said, "Well, I know Mr. Gegauf's attorney. I have frequent contacts with him." And he offered to approach them.

I said I didn't think that would do any good; that I thought that would be just as bad.

He said, "Oh, I won't say anything about Singer asking me or intimating to me or say anything at all about Singer." He said, "I will just let him think that it came directly from me." He said, "I think it would be advantageous" or some words to that effect, "if Singer owned the claims which were in the Harris patent or got the claims that would be granted." He didn't know what claims were in there, but if Singer retained the United [fol. 1119] States claim.

Q. Was there any discussion or any mention of the use of any other patent?

A. At the time all I was trying to do in the whole subject of this conversation was to get Mr. Gegauf to come to Singer. Singer had had to go to Mr. Gegauf, and, of course, when you have to go to a European to buy something, they immediately realize that you must—well, it puts you in a bad bargaining position.

The Court: I wouldn't limit that to Europeans.

The Witness: No but it seems to be a little worse in Europe.

The Court: No. We are a little prejudiced in our own favor. It is the same the world over.

Mr. Pettit: Would you read the question back to him, please.

(Question read.)

A. No.

Q. Was the use of two patents in conjunction with each other, several patents, or use of patents in any way other than your being able to enforce them better, mentioned at that conference?

A. It was only this discussion between Mr. Magnoni and [fol. 1120] myself in relation to the possibility of purchasing the Gegauf patent. There was no mention of any other patents or any combination of patents.

Q. When Mr. Vigorelli used the word "advantageous" or "advantageous to all," what did you think he meant at that time?

A. I thought he meant that it would be better for his client if Singer, who was a corporation in the United States, owned the Gegauf patent and they would rather have Singer own it than have Gegauf because they thought that we could enforce it better or were in a better position to enforce it.

Mr. Pettit: Your Honor, would it be satisfactory to you to have a recess or an adjournment at this time?

The Court: Did you have in mind—is that all right with you, Mr. Elkins?

Mr. Elkins: Yes, your Honor.

The Court: All right, two o'clock.

(Recess until 2:00 o'clock p.m.)

[fol. 1121] Afternoon Session

2 P.M.

JOEL GIBSON STANFORD resumed.

Direct Examination Continued.

By Mr. Pettit:

Q. I show you Government's Exhibit 28. I call your attention to the passage in here which says "When in Italy we laid careful plans for Gegauf to be advised by a third party that Singer could best handle the patent situation if we owned the Gegauf U.S. patent. Think it will bear fruit. This suggestion, with the U.S. attorney situation is pressure in the right direction."

Now will you please state what you were referring to and what you meant by "Singer could best handle the patent situation"?

A. I was referring to the discussion that I had with Magnoni when in Italy.

Mr. Elkins: If your Honor please, if the defendant is using Government's Exhibit 28 to refresh his recollection, I think that the record should show it. I think that opposing counsel should ask him for his testimony and only after exhausting the memory of the witness should he attempt to refresh his recollection.

The Court: He is not attempting to refresh his recol-[fol. 1122] lection as to the contents of this paper. He is calling his attention to a specific sentence in this paper.

Mr. Elkins: Yes.

The Court: And he is asking him what matters he referred to. That is entirely different than attempting to use a paper to refresh a witness' recollection.

Mr. Elkins: And my inquiry is why the document is left in front of the witness and why the witness refers to it——

The Court: For the purpose of facilitating the examination so that as the witness is asked a question, "What did you mean by this sentence", the witness may look at it.

(Mr. Pettit removes the exhibit from the witness stand.)

The Court: You do not have to take it away from him.

Mr. Pettit: That is all right.

The Court: The witness may look at that particular sentence, and if necessary look at the sentence above that preceded it, and the sentence that followed it, and read the sentence from its context, which is something that [fol. 1123] you have been urging the Court to do with reference to this multitude of exhibits.

Mr. Elkins: That the latter part is true, we agree with your Honor.

The Court: Well, you are a very able and experienced lawyer, Mr. Elkins. You have tried a number of cases before me. You know that this is proper—you have done it yourself. Your memory has perhaps skipped in that respect.

All right—I have done that many times in my practice.

Q. To what patent situation were you referring, in referring to your talk with Magnoni?

A. The possible purchase of the Gegauf patent.

Q. Thereafter did you or Mr. Waterman or the company make inquiry as to whether Mr. Magnoni had carried out the enterprise that he had suggested?

A. We did.

Q. And did you receive an answer to that inquiry?

A. We did.

Q. And is this answer, Government's Exhibit 31, a letter dated June 19, 1956, to Mr. Waterman, which I now hand to you (handing witness).

[fol. 1124] (Witness examines)

Q. Is that the reply?

A. That is the reply, yes.

Q. You will notice that there is a quotation from Mr. Magnoni's letter and he says "Subject: Interfering patents Singer/Gegauf/Vigorelli"—and then follows the sentence:

> "With regard to the question of the advantage of the American Singer Company being in possession of the different patents which might be useful in defense of sewing machines with multiple cams"——

will you tell me what you considered that this referred to when you received and read the letter?

A. I thought the different patents were the patents of Singer and Gegauf.

[fol. 1125] Q. Which two patents would they be?

A. The Harris patent and the Gegauf patent.

Q. Why did you conceive that Vigorelli was not among those intended to be covered by that sentence?

A. Vigorelli at this time was out of the interference with Singer or, rather, with Harris; he had already been in interference, so certainly he would not be included in this.

Q. Are you referring to the documents that I showed you this morning, correspondence from his counsel under the February 26th date?

A. I believe that was the date, sir.

Q. Had you had any conversation with Mr. Magnoni that referred to or mentioned any patent other than the Harris patent?

A. In the license agreement that was originally drawn up with Mr. Vigorelli it did have the Johnson and Perla applications mentioned in it, but there was no discussion

with Mr. Magnoni the last time that I was in Italy when we talked of the possibility of getting Gegauf to approach us to sell his patent.

Q. No mention was made of any patent other than the Gegauf patent and your having the Harris patent——

A. And the Harris patent.

[fol. 1126] Q. —in which you thought you would not win the claim, is that right?

A. That's correct.

Q. When he wrote his subsequent letter, which is Government's Exhibit 32, a letter dated September 19, 1956 and addressed to you, which I now hand you, did you consider at that time that there was any confirmation in this letter that showed that Magnoni was speaking about the Harris and Gegauf No. 1 patents?

A. Yes. On the second page of this letter he called attention to the fact that Singer, by making use of the owned Harris and Gegauf patents. He refers there to the Harris and Gegauf patents.

Q. On the first page of that letter Mr. Magnoni states:

> "Mr. Gegauf was today effectively willing to transfer his patent application in the U. S. to Singer without regard or little regard to the financial side of the matter."

Did you confer with Mr. Gegauf a few days or a short time after this?

A. Yes, we met him at Lindau.

Q. On September 23rd?

A. I believe that to be the date.

[fol. 1127] Q. And did you find him willing to transfer his patent without regard or with little regard to the financial side of the matter?

A. No; he wanted a very high price.

Q. Had there ever been any mention to Mr. Vigorelli, Magnoni or anyone else of the possibility of acquiring Vigorelli's patent or patent application in the United States?

A. The one that was interfering with—you mean by that the one that was interfering? No, we never made any comments or any efforts whatsoever to acquire that patent.

Q. And no mention of it was ever made to Mr. Vigorelli or any representative of his?

A. Not to the best of my recollection.

Q. After the time that you received this letter of September 19, 1956 have you, Mr. Waterman, or anyone representing Singer received any communication of any kind from Mr. Vigorelli or from Mr. Magnoni with respect to Singer's acquisition or possible acquisition of the Gegauf application?

A. No, sir.

Q. Was there a conference in New York attended by Mr. Gegauf, Jr.?

[fol. 1128] A. Yes, there was.

Q. And do you know the date or the approximate date of that?

A. That was when the factory was closed, and it was the first part of August 1956.

Q. And who attended that conference?

A. Mr. Waterman, myself and Mr. Gegauf, Jr. and his sister.

Q. Tell us what took place at that conference, what subjects were discussed and what was said.

A. Mr. Gegauf, Jr. and his sister had just returned from the West, where they had attended a conference in Kansas City. The conference had to do with sewing machines and sewing machine importers, I think—I am not sure, but I think that was what it was—and Mr. Gegauf, Jr. said to me that when he was there he saw many Japanese sewing machines, there were a large number of them, and he expressed concern, I might say, over the number that he saw there.

We talked about the large number of machines being imported into the United States, the difficulty with enforcing a United States patent where there were a large number of importers, the size of the United States, the number of circuits that we had and the difficulty of finding [fol. 1129] who was selling the machines and then, after finding out who was the seller, finding out the importer because you couldn't go around suing every retailer of sewing machines, that you would have to find the larger ones, and that these all presented a problem to owning a United States patent and trying to enforce it against importers of sewing machines.

Q. Did you have any purpose or objective in telling Mr. Gegauf——

A. We, of course, were trying to emphasize to him how difficult it was and how expensive it was to try to enforce a United States patent under those conditions, and that we thought that, being here in the United States, we could better enforce it than he could, and we asked him whether or not he thought his father would be interested in selling his United States patent to us.

Q. Does that cover the substance of what took place at that conference?

A. Yes, except that he did ask if he could visit our factory as we had visited his when we were over there, and we had to tell him that the factory was closed and that we couldn't let him in or he couldn't see it in operation.

[fol. 1130] Q. Did you thereafter seek a conference with Mr. Gegauf, Sr.?

A. We did, sir.

Q. Did you make arrangements to go to Europe to see him?

A. Yes, we were going to Germany, and we made arrangements to see him in Germany at Lindau, which is just across Lake Constance from Steckborn.

Q. When you went on that trip did you take any forms of agreement with you that you contemplated using or hoped that you could use?

A. As I recall, we did at that time.

Q. And those forms of agreement were of what nature, if you remember?

A. Well, they were just, as I recall, an assignment and a license back to Mr. Gegauf.

Q. Did you set the conference date with Mr. Gegauf?

A. Yes.

Q. Do you know when it was held?

A. It was mentioned a moment ago. I am not so sure of exactly when the conference did take place.

Q. Would it refresh your memory if I said September 23rd?

A. Yes.

[fol. 1131] Q. You attended the conference?

A. Yes.

Q. And it was held at Lindau, did you say?

A. Lindau.

Q. Did you write to Mr. Lando in Italy with reference to that conference?

A. Yes, I did.

Q. Now tell us what took place at that conference.

A. We met around 12:30 and had lunch, and then after lunch there was a discussion of the possible sale of the patent to Singer, and there was the usual skirmish as to who would make an offer, and then Gegauf, Jr. finally came out with an offer of a million dollars.

We laughed at that and we thought that he was just kidding, and after considerable discussion back and forth they made the second offer of $250,000 but that was way in excess of anything we expected to pay.

Then they tried to get from us—they had made two offers, and said so, and they tried to get from us an offer, and we told them that we were so far apart that we just didn't feel that we should even make an offer. So that was the end of the conference, our failure to make an [fol. 1132] offer, and we left them in a friendly spirit.

Q. Did you feel that the negotiations were thereupon terminated?

A. As far as we were concerned at that time they were definitely terminated.

Q. Did you write this letter of October 9, 1956 to Dr. Lando, Government's Exhibit 37 (handing)?

A. I did.

Q. And does that express your conclusion as of the end of that conference?

A. It does, sir.

Q. Was there any subject matter that you reserved for any subsequent discussion at any subsequent time?

A. To the best of my knowledge there was none.

Q. Did you hear any other party who was with you, Mr. Waterman specifically, reserve any subject matter for possible further discussion?

A. No, sir.

Q. And you considered the negotiations thereupon terminated?

A. I did.

Q. Shortly thereafter, on October 22, 1956, did you have occasion to write to Mr. Waterman and suggest that he [fol. 1133] write to Mr. Gegauf with reference to the interference that was pending?

A. Yes, sir.

Q. Did you write this letter of October 22, 1956 addressed to Mr. Waterman, Government's Exhibit 78, inclosing a proposed draft of a letter to Mr. Gegauf, Government's Exhibit 39 (handling)?

A. That was prepared for my signature. I did not write the letter.

Q. Did you sign the letter?

A. Yes.

Q. You read the letter and knew its contents?

A. Yes, sir.

Q. And you made the recommendation therein contained?

A. Yes, sir.

Q. Did Mr. Waterman write the letter of October 24, 1956, Government's Exhibit 41, to Mr. Gegauf?

A. No. This is a letter that I wrote to Mr. Gegauf.

Q. I am sorry. You wrote the letter of October 24th.

A. I did, sir.

Q. This suggested draft was a draft of a letter that you [fol. 1134] would like?

A. Right.

Q. Is the letter that you wrote the same as the draft that you suggested?

A. If I recall, it is the same.

Q. In your letter to Mr. Waterman you state:

> "We have heard nothing from Gegauf or his U. S. attorneys concerning this interference since our recent trip. You will recall that under our Singer-Gegauf agreement it is incumbent upon both parties to settle this interference in accordance with the patent laws of the United States."

Is that what you believed the situation to be at the time you wrote this letter?

A. Yes, sir.

Q. And you were deliberately advising Mr. Waterman, vice president of the company, to that effect?

A. Yes, sir.

Q. And you were suggesting that you write to Mr. Gegauf——

A. Yes.

Q. —in which you advised Mr. Gegauf that: Our agree-

ment provides that this interference be settled in accord-
[fol. 1135] ance with the patent laws of the United States?

A. Yes, sir.

Q. And you wrote that letter to Mr. Gegauf containing that very sentence?

A. I did.

Q. And that was, I believe, in connection with the settlement of an interference which you knew would be awarded to Mr. Gegauf?

Mr. Elkins: I object, your Honor.

The Court: It is leading.

Objection sustained.

Q. At the time did you know the situation with respect to the interference, at the time you had gone there?

A. Yes, I knew what the priority dates of both parties were.

Q. And what was the situation at that time with respect to those interferences?

A. Mr. Gegauf was ahead of any date that we could establish for Harris.

[fol. 1136] Q. And what was your conclusion from that?

A. That the claim would be awarded to Mr. Gegauf.

Q. And you were prepared to go ahead with that interference and settle it in accordance with the laws, the Patent Laws of the United States?

A. Yes.

Q. Now your conference with Mr. Gegauf came to an end in 1956, the month of October, I believe?

A. Yes.

Q. Did you have any further communication with Mr. Gegauf with reference to any possible purchase of his patent between that time and September 9, 1957, almost a year later?

A. It was about a year later, I believe, before the subject was brought up again.

Q. No discussions, no talks of any kind with reference to it in that intervening 11 months with Mr. Gegauf?

A. To the best of my knowledge, sir, that is true.

Q. And none with Vigorelli or Magnoni with reference to the possible acquisition of this Gegauf application?

[fol. 1137] A. No, sir.

Q. On September 9, 1957, did you suggest to Mr. Waterman that a letter be written to Mr. Gegauf?

A. I believe I did. I know that I suggested that another letter be written to Mr. Gegauf in an effort to acquire his patent.

Q. I show you Government Exhibit 43, a letter signed by you and addressed to Mr. Waterman, dated September 9, 1957, and a proposed letter annexed thereto, and ask you if you wrote that letter to Mr. Waterman (handing witness)?

A. I did, sir.

Q. And you suggested the writing of the letter annexed to it?

A. Yes, I did.

Q. At the time that you wrote this letter, it states "It is our feeling that we have nothing to lose and much to gain by again seeking to obtain the rights in the Gegauf United States patent application".

Did you have a feeling or express any feeling that you were just resuming negotiations that had been held in abeyance?

A. Well, I don't think our approach was that we were just going to start in just where we left off.

[fol. 1138] Q. You did want to approach Mr. Gegauf for the possible purchase?

A. Yes.

Q. In your proposed letter you did not suggest anything about a possible purchase, is that correct?

A. That is correct.

Q. Why is that?

A. Well, we didn't want Mr. Gegauf to feel that we were just coming back again for the same thing, trying to buy his patent.

Q. Did you use this letter as an approach to get to Mr. Gegauf?

A. Yes, we wanted to talk with him again.

Q. And when you were there, to bring up the subject of purchase?

A. Yes, that is correct.

Q. Did Mr. Waterman then write a letter, which is Government's Exhibit 44, dated September 12, 1957, to Mr. Gegauf (handing witness)?

A. He did.

Q. Do you find a change in that letter over or as compared to the form of letter that you had suggested be written?

A. Yes, there is a little change.

[fol. 1139] Q. What is that change?

A. Well, where I had referred to the large import of Japanese machines into this country, Mr. Waterman took a much broader view in that he was interested——

Mr. Elkins: I object as to what views Mr. Waterman took. The question is——

The Court: You may tell us what he said to you or spoke to you about that manifested this view which led him to feel that this view was distorted——

The Witness: I am sorry, sir?

The Court: You were going to tell us what Mr. Waterman said which indicated his view and what he did which indicated his view. Don't characterize it.

The Witness: He changed the letter to include infringing manufacturers who are primarily manufacturers in other countries.

Q. I would like you to clarify that distinction.

What had you written with reference to the enforcement of patents in this proposed letter that you handed to Mr. Waterman?

A. I said to Mr. Gegauf in my letter that "You are no doubt aware that recently the many Japanese sewing ma-[fol. 1140] chine manufacturers have brought out a large variety of ornamental stitch machines which would appear to come within the terms of claims which may be awarded in the United States with respect of the above Gegauf and Singer patents".

The Court: He specifically took out your reference to Japanese machines, did he?

The Witness: That is correct, and he put in——

The Court: Did he make any other substantial change?

Q. I wish you would—excuse me, answer that question.

The Witness: No other substantial change, your Honor.

The Court: Did you speak to him concerning this deletion of this specific reference to Japanese sewing machine manufacturers?

The Witness: No, your Honor, this letter was sent out like that.

Q. Now, Mr. Stanford, you wrote "We have reason to believe that all of the very many United States sewing machine importers will wish to deal in such Japanese ornamental stitch machines, and that patent suits against each [fol. 1141] of these importers may be necessary if our respective patents are to be enforced".

What idea were you trying to convey in that sentence?

A. Well, I was trying to convey that it was a difficult job to enforce the patents in the United States—if you had to bring suits against all the importers that had different types of machines, to establish your rights.

Q. Well, were you trying to convey the idea that if they were going to enforce the patents you would have to sue Japanese importers?

A. Yes.

Q. Would it have been possible to enforce patents in the United States and not sue the Japanese importers?

A. No, we would not—we would have to include Japanese importers also.

Q. Did you have any intention of implying—that to enforce the patents you would not have to sue other people as well?

A. We were interested in protecting the manufacture and sale in the United States of the 401 machine and wherever the machine came from, it was a loss of sale or potential loss of sale to Singer.

[fol. 1142] Q. But taking your own sentence, is it not correct that if you are going to enforce the patents you would have to do a broader job than just sue the Japanese?

A. Yes, you would have to sue more than the Japanese if you wished to enforce it.

Q. Is that the point in your opinion that Mr. Waterman was covering by making this change, that if you are going to enforce it you would have to sue infringers?

The Court: Objection sustained—on the Court's objection.

Q. Did you receive a reply from Mr. Gegauf or Mr. Waterman did, to that letter?

A. Yes, sir, to the best of my recollection he did.

Q. Is that Government's Exhibit 45, a letter dated September 17th (handing witness)?

A. Yes, that is correct.

Q. Had anyone mentioned to Mr. Gegauf, since the meeting of the year before, about a transfer of the patent to Singer?

A. Not to my knowledge.

[fol. 1143] Q. Or Singer to Gegauf?

A. Of the Harris patent to Gegauf?

Q. Did Singer mention to Gegauf any possibility of the transfer of the Gegauf patent to Singer?

A. Since the meeting?

Q. Yes.

A. To the best of my knowledge, no.

Q. Then when you wrote this letter to Mr. Gegauf, which referred to "mutual enforcement of the U.S. application", did you believe that he was intimating that he was volunteering the information to you that he might be willing to convey his patent to you?

A. No. I thought that "mutual enforcement"—I don't know how you can mutually enforce anything but I imagine being German, he was using a term that meant we would have to enforce ours and he would have to enforce his.

Q. Your previous letter to him was written on its face for the purpose of discussing problems of enforcement of the patents, was it not?

A. Yes.

Q. Did you prepare forms of agreement which you thought should be taken with you when you went to see Gegauf in September, 1957?

[fol. 1144] A. Yes, I did.

Q. I show you these assignment forms and ask you if they were the documents which you prepared. These are Defendant's Exhibit 36, Defendant's Exhibit 37 and Defendant's Exhibit 38 (handing witness).

(The witness examines.)

Q. Are those the documents you prepared to take with you?

A. They are, sir.

Q. And those are the forms of assignments with license back?

A. One is, and one is an ordinary assignment form.

Q. With reference to that assignment, one of those assignments, you stated "Agreement (1) is suggested for use in the event that Gegauf should be willing to sell us the application for a single lump-sum payment. This agreement has the advantage of providing Singer with an irrevocable title to the subject application and, furthermore, under this agreement it would not be incumbent upon Singer to deal any further with Gegauf in connection with this general subject."

What did you intend Mr. Waterman to believe as a result of that advice?

A. That the assignment of the entire right to us in a [fol. 1145] lump-sum was much better from the Singer point of view.

Q. And did you understand that you would believe, once that would be done, that there would be no necessity of any further dealings of any kind with Mr. Gegauf?

A. Yes.

Q. And that would be under the form of the proposed agreement that you had drawn?

A. Yes.

The Court: No, the letter doesn't say "any kind". It just says "this general subject", which I take it was the subject of enforcement, was it—enforcement against infringement?

The Witness: That—I am not sure, your Honor. I would have to see that.

Q. Yes. Look at this Exhibit 47, the last line on the first page (handing witness).

You say "general subject". What did you mean by "general subject"?

A. Anything at all having to do with the patent.

The Court: The enforcement of the patent?

The Witness: The enforcement of the patent.

The Court: And that is all?

[fol. 1146] The Witness: Oh, the license back or anything other than—I mean license or anything else that related to it.

The Court: But you already had a license, didn't you?

The Witness: Yes, we had—but I meant licensing others.

Mr. Elkins: That is Government's Exhibit 47, your Honor.

The Court: Yes, 47. That is dated September 23, 1957.

Q. You held a conference with Mr. Gegauf with reference to this matter?

A. We did, sir.

Q. And what date was that conference?

A. I do not recall the date but it was some time in the fall of 1957. It was at Zurich.

Q. And can you tell us what took place there and who was at the conference?

A. There was Mr. Gegauf Sr., Mr. Gegauf Jr., and two members of his organization.

As I recall, Mr. Gegauf's daughter was also there, and Mr. Waterman and myself were the only representatives of Singer.

[fol. 1147] Q. And what took place?

A. Well, we started on general subjects and we got around to bargaining for the patent, and we started out offering him $25,000—we made a first offer of 25,000, and they bargained us up to 40,000. We thought we had it at this figure, and we ended up the conference discussions with the thought that Mr. Gegauf would be willing to selling us the United States patent application for $40,000.

Q. At that conference do you remember anything else being discussed?

A. I have difficulty remembering very much about the conference other than it was held and we thought that we were—I remember we were bargained up from 25,000 to 40,000.

Q. I show you a letter of October 17, 1957, from Mr. Lightner to Mr. Waterman, Government's Exhibit 49, and I ask you to look at that and see if that refreshes your memory in any respect (handing witness)?

A. It refreshes my memory only to the extent that this matter was treated as if it were not overly important to Singer.

Again there were natural language barriers and we had [fol. 1148] some difficulty understanding each other because the only translators present were Mr. Gegauf's daughter who speaks some English, and one of the mem-

bers of his organization. We did not have someone who understand patent language with us.

Q. Other than that, do you recall anything else that was said or done at that conference?

A. I do not.

Q. Did you discuss the form of the agreement?

A. We had those two forms of agreement that we took over with us that you showed me a moment ago, and we showed them to Mr. Gegauf, and he—we showed them first to him, and he wanted the matter taken up with his patent attorney, Mr. Willi, and so we then took these forms down, the assignment forms or the license back, to Mr. Kirker, who was in Geneva, and we gave them to Mr. Kirker and asked him to take them up with Mr. Willi, to see if they were proper, and if Mr. Willi would agree, and if they were, if he felt they were proper, to return them to us in the United States and we would send them back properly signed with $40,000.

Q. Did you give Mr. Kirker any authority or any direction to negotiate any contract other than the one in [fol. 1149] the form that you had delivered to him?

A. We had delivered this to him, and the only thing left out was the $40,000, and he was supposed to fill that in and submit to Mr. Willi, Mr. Gegauf's attorney.

Q. And did he have any authority to vary any of the terms and conditions of the contract as you handed it to him?

A. No.

Q. In which the $40,000 was inserted?

A. He did not.

Q. He was not authorized to negotiate any terms or any changed terms in that?

A. At that time we felt the whole thing was already negotiated and it was only necessary to get Mr. Willi's approval.

Q. And so far as your memory serves you, is that all that took place and all that was said at that conference?

A. Yes, that is all I can remember.

Q. Now some time after that you received a cable from Mr. Waterman relating to the situation with Gegauf.

I show you Government's Exhibit 50 and ask you if that [fol. 1150] is a cable you received (handing witness)?

A. It is.

Q. That cable you replied to by Government's Exhibit 51, did you (handing witness)?

A. Yes, it is.

Q. You replied in your cable, stating "Value of Gegauf patent to Singer greatly decreases when other people are licensed":

Why? What purpose did you so advise Mr. Waterman, and what did you intend to mean thereby?

A. Well, we were saying that if there were to be European companies, as stated in the cablegram, licensed under this patent, it was very greatly decreased—the value of it would be decreased so far as we were concerned.

Q. In other words, the cable raised the point that Gegauf wanted exceptions under which he could——

A. He wanted to license Pfaff, Vigorelli and Necchi.

Q. You deemed that a license to any person, European or any other, depreciated the value of what you got?

A. Yes. The more licensees you have, the less you get under the patent when you purchase it.

[fol. 1151] Q. You said "Divisional claim must be included".

What was that in response to?

A. That was in response to the fact that he said that he was not going to include the divisional application, and this is the application that we had bargained for in the fall of that year, that we thought we had bought for $40,000.

Q. Was this the first indication from Gegauf that he wanted to reserve out this divisional application?

A. This is the first indication that we had that he was going to file a divisional application.

Q. Why did you state "Divisional claim must be included"?

A. We wanted the claim because we had entered into an agreement with Messerschmitt, on Messerschmitt's machine we gave them a license in the United States under our Gegauf and Way patent, and we wanted to protect ourselves because this was a very valuable license to us. We had sold many machines in Europe and we did not want anything like bad faith or any failure of consideration to occur.

Q. Are you referring to Government's Exhibit 86, the

cross-license agreement with Messerschmitt, which I hand to you (handing witness)?

[fol. 1152] A. Yes, this is the agreement that was filed and was signed in '57.

Q. Under that agreement you had given a license to Messerschmitt to sell in the United States, which was based on the Perla application?

A. That is correct.

Q. What was the situation with respect to Gegauf divisional application once it was made—and I understand it was not yet made at the time, but once it was made, what was the relative priority position between the Perla application covering the Messerschmitt machine and the Gegauf patent?

A. Gegauf having the prior date and being entitled to go back to that date, even though these claims had been in the Office for quite a long time, he was still entitled to go back and he would dominate the Perla patent, and also the Messerschmitt machine, so that Messerschmitt would not be able to make it in this country without a license from Mr. Gegauf on the second patent, on the divisional application.

Q. Did you ever tell Gegauf during any of these negotiations after he raised this point of retaining the divisional application why you wanted it?

A. No. If I had I am afraid it would have gone up [fol. 1152a] considerably in value so far as he was concerned.

Mr. Pettit: If it would suit your convenience, your Honor, I would just as soon have five minutes recess now.

The Court: All right.

(Recess.)

[fol. 1153] Q. Mr. Stanford, I believe you subsequently received a letter from Mr. Kirker amplifying his cable, explaining it in more detail, which is Government's Exhibit 52, a letter addressed to you, is that correct (handing)?

A. Yes.

Q. Did you then reply to that letter by Government's Exhibit 53, a letter of October 30, 1957 addressed to Mr. Kirker, which I now show you?

A. I did.

Q. In your reply of October 30, 1957 did you consider that you were giving an answer to every question raised by Mr. Gegauf and every question pointed out by Mr. Kirker?

A. Yes, I think we were, sir.

Q. And did you consider that you were giving instructions to Mr. Kirker with respect to each of the points raised?

A. Yes.

Q. Did you consider that you were leaving any leeway or expression or power of authority to Mr. Kirker with respect to anything other than the possibility of holding down the amount of money that you had fixed as a maximum?

[fol. 1154] A. No. We told him what we were willing to do and gave him permission to go to $75,000, but we wanted to get it for $62,500.

Q. Did you consider that by this letter you were telling Mr. Kirker——

The Court: I think these questions are all really objectionable. What he considered is immaterial. What did the letter authorize him to do?

Mr. Pettit: Your Honor, with respect to this letter I guess that is correct.

The Court: While an agent may testify as to his authority, a principal may not interpret a written document unless it is ambiguous.

Mr. Pettit: I submit, your Honor, the only thing is that the letter is so clear that the testimony is not needed anyway.

The Court: I hope the questions that you propounded are not an indication of any question in your own mind.

Mr. Pettit: Not in the slightest, your Honor.

The Court: They might have been to one of a suspicious bent.

Q. Did you then receive a reply to this last letter that you just mentioned, a reply from Mr. Kirker, Government's [fol. 1155] Exhibit 56 dated November 18, 1957, which I now show you?

A. Yes.

Q. And upon receipt of that letter was it concluded that you should go to Europe?

A. Yes. As I recall, as a result of this letter it was decided that I should go to Europe.

Q. Before you went to Europe did Mr. Lightner, the then president of the company, write a memorandum for your guidance?

A. He did.

Q. And establishing the policy of the company?

A. He did.

Q. Is this the document set forth herein, Government's Exhibit 57?

A. Yes, sir.

Q. I call your attention to page 4, the paragraph beginning at the bottom of the page. It says:

> "In determining whether to broach this idea in the course of negotiations, it must be remembered that getting control of the patent is the main objective, with the elimination or curtailment of European imports as an important but secondary objective . . ."

[fol. 1156] First I would like to know did you consider that as a directive to you as to your negotiations when you were over there?

A. Yes, sir.

Q. Did you consider that there was any change in the policy that you had been trying to carry out all along?

A. No.

The Court: Come back for a moment to Government's Exhibit 56. This was written before your visit to see Gegauf?

The Witness: Yes, sir.

The Court: And after receipt of this letter you did go over and see Gegauf?

The Witness: Did I?

The Court: Yes.

The Witness: Yes, sir, I did.

The Court: Did he, during your talks with him, mention the specific one European Company to which Gegauf would like to reserve the right to grant a sub-license?

The Witness: Did Mr. Gegauf?

The Court: Yes.

The Witness: Yes, he did.

[fol. 1157] The Court: What was the name that he mentioned?

The Witness: Pfaff.

The Court: That's all I wanted to clear up in my mind.

Mr. Pettit: May I ask with respect to what paragraph was that question directed.

The Court: Government's Exhibit 56, second page, third paragraph. It says intervenor wanted to reserve to itself the right to grant a sub-license to one European Company, one European manufacturer.

The Witness: Yes.

The Court: And he mentioned that that one was Pfaff.

The Witness: Yes, during my discussion with him.

The Court: All right.

Q. On this trip to Europe which you took, did you meet with Mr. Gegauf?

A. Did I?

Q. Yes.

A. Yes, I did.

Q. And did you enter into agreements with him?

A. I did.

[fol. 1158] Q. I show you Government's Exhibits 58 and 59 and ask you if those are the two agreements that you entered into.

A. Yes. One is the assignment from Gegauf to Singer and the other is the agreement with Gegauf, the license-back from Singer to Gegauf.

Q. Did you, to your knowledge, or did anybody on behalf of Singer, enter into any agreement with Mr. Gegauf with respect to this application or any patent or patents that might be issued other than the agreement expressed in the assignment itself?

A. In the assignment and the license agreement, no.

Q. Did you make any commitment or have any understanding or make any promise or did you or anyone else on behalf of the company, so far as you know, make any such promise or commitment or have any understanding that you would use any patent that issued upon the application assigned against any particular person or any particular group of people?

A. No, there was no such——

Q. Or that you would use it in any particular manner.

A. No.

[fol. 1159] Q. Or that you would not use it.

A. There was no agreement concerning what use the patent would be put to.

Q. I ask the same question with respect to licensing or not licensing any patent that you might want.

A. There was no curtailment of any rights on that.

Q. Your answer is you had no such agreement or understanding?

A. No such agreement.

Q. You made no such agreement?

A. No such agreement.

Q. Did you mention to Mr. Gegauf, to Mr. Waterman or to anyone else the existence of the remedy or the possibility of bringing an action before the Tariff Commission in the United States?

A. No.

Q. Had you, as a matter of fact, at any time prior to the execution of these assignments had any knowledge or given any recognition to the fact that any such proceeding could be brought in conjunction or in connection with these assignments?

A. No.

Q. And I ask the same question with respect to Vigo-

[fol. 1160] relli or Vigorelli's representative.

A. No.

Q. Would your answer be the same with respect to all questions?

A. It would.

Q. Did you make any agreement, have any commitment or any understanding that you would use the patent in conjunction with any other patent?

A. None whatsoever.

Q. Not even in conjunction with the Harris patent?

A. We had no agreement as to how we would use the patent.

Q. When you executed this agreement, you understood, assumed and believed that Singer became the complete owner of the patent, free to use it as it might see fit or not use it, limited by no means other than as expressed in the agreements themselves?

A. That's right, sir.

Q. Have you ever heard anyone on behalf of the company suggest anything to the contrary?

A. No, I have not.

Q. Do you know, Mr. Stanford, when consider was first given by the company to bringing the Tariff Commission proceeding?

[fol. 1161] A. Sometime, I believe, in the latter part of May, after we acquired the patent in December. We acquired the patent in December, and I think it was about five months after the acquisition of the patent that we gave any consideration to that.

Q. In May 1958?

A. That would be correct, sir.

Q. And would you state with whom the question was taken up as to whether such a proceeding could be brought under the existing situation?

A. That was taken up with Mr. Brumbaugh, and he recommended——

Q. He recommended what?

A. That we see Mr. Colburn.

Q. And Mr. Colburn is an expert on tariff?

A. Expert on tariff matters.

Q. And following the Tariff Commission proceeding did you contemplate getting or intend to get an order if the Commission would grant it, or recommend to the President that it be granted, that would exclude from the United States all imports of all machines that would infringe Gegauf No. 1?

A. That was my understanding of the effect of the action.

[fol. 1162] Q. And that was what you and Singer hoped to obtain as a result of this proceeding?

Mr. Elkins: Objection. I don't know who the question is directed to, to Mr. Stanford or to Mr. Singer, or whether it relates to Mr. Stanford or to Mr. Singer. I think the opposing counsel used both in his question.

Mr. Pettit: I think Mr. Stanford is fully acquainted with this whole proceeding.

The Court: You referred to Mr. Stanford?

Mr. Pettit: Yes.

The Court: That is considered embodied in the question.

Mr. Elkins: The question is directed to the thinking of Mr. Stanford.

The Court: That's right.

Mr. Elkins: And the decisions of Mr. Stanford.

The Court: That's right.

Mr. Pettit: And to the best of his knowledge and information——

The Court: No. First as to him. I don't know that he can testify to the thinking of anybody else. He must be quite a fellow if he can, unless it has been manifested by some action.

[fol. 1163] Q. Your own, Mr. Stanford. Was it your contemplation that you contemplated or expected to get an order that would exclude all infringing machines?

A. That was our hope.

Q. Had you heard any expressions of any of the officers of the company indicating anything to the contrary?

A. I had not.

Q. And you have discussed the matter with Mr. Kircher?

A. The matter was discussed with Mr. Kircher before the action was brought.

Mr. Elkins: Excuse me, your Honor.

For the benefit of the record, there are two names here, Kirker and Kircher, and the last name mentioned was Kircher?

Mr. Pettit: Kircher, the president of the company.

Mr. Elkins: I see. Thank you.

Q. You participated in the conferences and in the drafting and execution of the agreement with Sears, licensing Sears under Gegauf No. 1, I believe.

A. Yes, I did, sir.

Q. And you examined the sewing machine that Sears [fol. 1164] wished to import into the United States?

A. I did.

Q. And did you make a determination as to whether that machine infringed Gegauf No. 1?

A. It was my opinion that it did.

Q. And you examined it and made that determination?

A. I did, sir.

Q. Did you determine whether, in your opinion, it would infringe the patent that would issue under Gegauf No. 2 application?

A. In my opinion it infringed Patent No. 1 of Gegauf, the single follower.

Q. And was it your opinion that it did not infringe or did infringe the patent that would issue under Gegauf No. 2?

A. My opinion was that it did not infringe that. It infringed the first patent.

Q. And did you so express yourself?

A. I did.

Q. And for what reason was the Gegauf No. 2 included in the license agreement executed with Sears?

A. At the insistence of Sears.

Q. If the Sears license had not been with respect to a machine which infringed Gegauf No. 1, would there have [fol. 1165] been any occasion whatever, in your opinion, to have referred to the Sears license to the Tariff Commission?

A. No. If it had only been an infringement of Gegauf No. 2, there would have been no necessity in bringing that up before the Tariff Commission.

Q. And you considered that it infringed Gegauf No. 1 and there would be a license under Gegauf No. 1 and reported it to the Tariff Commission as such, notwithstanding the fact that you believed that it might imperil the Tariff Commission proceeding, is that correct?

A. We did, sir.

The Court: That's taking him right down by the nose.

Mr. Pettit: I am almost through with these, your Honor. I believe I am going to be through with this this afternoon, if I hurry.

The Court: All right. If you continue that way, you shouldn't take too long.

Do you want a few minutes to check something?

Mr. Pettit: Yes, I do.

The Court: I would like you to find out from this witness whether he knows whether that letter, Exhibit 57, was an- [fol. 1166] swered, Gegauf's letter, after the Sears license was issued.

Mr. Pettit: Whether he knows whether it was answered?

The Court: Yes.

Mr. Pettit: I can ask him that one right now, if I may.

The Court: No. Gather all your papers together and let me know when you are ready. Just see that you get all your loose ends gathered. Let me know when you are ready.

(A short recess.)

[fol. 1167] Q. I show you Defendant's Exhibit 57, a letter from Mr. Gegauf to Mr. Waterman, and ask you if you know whether an answer was made to that letter (handing).

A. No, sir, I do not know whether an answer was ever given to this letter.

Q. Is your answer that you know of no such letter?

A. I know of no such letter.

Q. Have you heard anyone suggest that an answer was made?

A. I have not.

Q. Will you please state the policy that has been carried on in your patent office by Singer with respect to the purchase of patents.

A. The acquisition of patents by Singer, we never acquire patents unless we either contemplate making the device or unless it covers a machine which we have.

In the thirty years that I have been there I think that we have acquired only one patent relating to a domestic type of sewing machine—and other than until we started or acquired the Harris patent, up to that time or prior to that I don't recall one instance of acquiring a patent that related to a domestic type sewing machine.

Q. Will you state the policy of your office, Singer's policy with respect to bringing infringement action on patents [fol. 1168] owned by Singer.

A. I do not recall any infringement actions being brought on a patent which we did not use except in conjunction with other patents which were being sued on.

Q. In other words, if you are producing or selling an article under a patent which is being infringed, then you join in the infringement suit of any other patent that happens to be violated?

A. We do.

Q. Other than that, you never sue on a patent owned by Singer unless the company is producing or selling the product under it?

A. We never have.

Mr. Pettit: Your Honor, I think that is all for this witness.

The Court: I just want to ask one question.

Do you know whether this West German firm of Gritzner-Kayser is in any way a subsidiary or associated with Pfaff?

The Witness: It is my understanding, your Honor, that Pfaff acquired Gritzner-Kayser.

The Court: When?

The Witness: That I couldn't give you definitely.

[fol. 1169] The Court: Did you know that at the time you entered into this agreement?

The Witness: I would have to check into it, your Honor. I cannot recall.

The Court: All right. Any further questions?

Mr. Pettit: No, your Honor.

Cross-examination.

By Mr. Elkins:

Q. Mr. Stanford, I would like to direct your attention to Government's Exhibit No. 62, a memorandum written by you dated December 13, 1957, which related to your conference at about that time or a few weeks before with Mr. Gegauf.

Before I do, at that conference, as I understand your testimony, Mr. Gegauf spoke about wanting Vigorelli and Pfaff to be able to sell their machines in the United States without their being sued by Singer under the patents that he, Gegauf, was about to assign to you; is that right?

A. That's correct.

Q. So that in accordance with that desire of Mr. Gegauf, Pfaff and Vigorelli would, for all practical purposes, have a license under the Gegauf patents; is that true?

A. I did not quite get the question, sir. I am [fol. 1170] sorry.

Q. As a result of the provisions that Mr. Gegauf wanted in the agreement, the assignment agreement relative to Pfaff and Vigorelli, both Pfaff and Vigorelli would, for all practical purposes, would they not, have a license or what amounted to a license from Singer to import his machines?

A. No.

Mr. Pettit: Your Honor, I object unless he makes clear whether he is talking about the agreement itself or Mr. Stanford's understanding.

The Court: He is talking about the agreement, as I understand it.

Is that what you had in mind?

Mr. Elkins: Yes, your Honor.

A. Under the agreement Vigorelli has a right to manufacture machines in Italy and sell them in the United States.

Q. Yes.

A. Any other rights is entirely up to Mr. Gegauf as to what he—he gives his consent, and that is entirely in his hands and not in Singer's hands.

Q. At the time of the original agreement, Pfaff was in the same situation, was it not?

[fol. 1171] A. The original agreement—is that the agreement of 1957, in December 1957?

Q. That's right, sir.

A. His position was that we had given Mr. Gegauf the right to say whether or not any action could be brought against the Pfaff company——

Q. Yes.

A. —for any machines manufactured, as I recall, in Kaiserlautern—that is the location of the Pfaff factory.

Q. And as to Vigorelli and his machine or his factory in Italy and as to Pfaff and his factory in Germany, under that agreement Singer was not able to exclude the imports of either of those two companies; isn't that true?

A. That would be true, provided that Mr. Gegauf gave his—in effect, licensed Pfaff.

Q. Or withheld his consent, I suppose.

A. Yes, or withheld his consent.

Q. Now in this memorandum you say that as a result of the matter we were just discussing:

"In this way we avoided giving a license to a third party under the United States patents which we expect to obtain."

[fol. 1172] (Document handed to the witness.)

Q. You have read it, sir?

A. Yes.

Q. Are you referring there to some kind of advantage that inured to Singer by virtue of the fact that it "in this way avoided giving a license to a third party"?

A. Well, the fewer parties that you have licensed under a patent the more valuable the patent is, and so we avoided giving it to a third party.

Q. Who do you mean by a third party?

A. Originally he asked Necchi also be included, and this agreement that we signed with him did not include Necchi.

Q. Pfaff was one party, Vigorelli was a second party.

A. Yes.

Q. And by third party you meant still another, say, for example, Necchi?

The Court: No. He says that Gegauf, in his negotiations, had wanted to reserve to himself the right to license Vigorelli, Necchi and Pfaff, and the exhibits so show. He finally wound up with a deal where he gave his license to Vigorelli, and reserved to himself the right, at his option, [fol. 1173] in effect, to give a license to Pfaff. Necchi was dropped entirely.

That is what the exhibits show.

Q. Can you tell us, Mr. Stanford, when you first examined any Gegauf patent application?

A. The first one that I recall, sir, was the one that we received from Italy, or, I believe that was the first one that we received, shortly after we learned of its existence, when we were about to enter into negotiations with Vigorelli.

Q. Could you give us an approximation as to when that was?

A. That was in the fall of 1955, close to the end of the year, I believe. I have forgotten the exact time that we saw it.

Q. And that was, as you say, the Italian application of Gegauf?

A. That was the Italian patent of Gegauf.

Q. The Italian patent. Thank you.

When did you first see the United States Gegauf application.

A. When did we first—well, we asked to see it—I would have to have my recollection refreshed on that. I know we did ask Mr. Gegauf if we could examine it prior to start- [fol. 1174] ing negotiations with him for its purchase.

Mr. Elkins: I am sorry. I did not hear that last part of the answer.

(Record read.)

Q. Well, I think you started those negotiations, did you not, in September 1956, or the summer of 1956. Wasn't it April 1956, as you recall, that you entered into the cross-licensing arrangement with Mr. Gegauf?

A. I beg your pardon. With Mr. Gegauf the cross-licensing arrangement was in——

Q. April of 1956?

A. —April of 1956, yes.

Q. And then I believe generally the negotiations started in the summer or early fall of 1956 with Mr. Gegauf relative to the purchase of the patent, as you say.

A. As I recall it, yes.

Q. All right. Having those things in mind, then, can you tell us when you first saw the United States Gegauf application?

A. I think the first time we saw it was as a result of an interference proceeding. I did not handle the interference proceeding. I did not handle the Harris patent. I mean by that I was not the one who was actively engaged in the [fol. 1174a] prosecution of that before the Patent Office, but as I recall, sometime—I do not know—after the interference was set up, why, we did have access to the application that was on file at that particular time.

Q. Just to refresh your recollection, Mr. Stanford, may I quote from paragraph 69 of the Facts which have been agreed upon between the parties:

> [fol. 1175] "In September, 1956, arrangements were made with Gegauf for Stanford to examine the Gegauf application and for a conference to be held on September 23, 1956, in Landau, Germany. Stanford examined the Gegauf application", and so forth.

Does that refresh your recollection?

A. Well, I did not examine the application although it says "Stanford examined it". It meant Mr. Williams. I personally did not examine the patent application. He examined it and reported to me.

Q. So I gather from your testimony—am I right in concluding that some time in September, 1956, Mr. Williams of Singer and of your Patent Department examined that application?

A. In accordance with the paragraph that you read, yes.

Q. Well, how about your memory on it, sir?

A. Well, my memory is not clear as to the exact time that Mr. Williams examined it.

Q. Did you confer or did Mr. Williams confer with you as to the contents of the application?

A. Yes, he told me what was in it.

Q. All right. What did he tell you was in it?

A. He told me—the only thing I can remember is he [fol. 1176] told me that it was in order——

Q. I am sorry, I did not hear it.

A. It was in order and there were no defects in it which would prevent Singer from acquiring the patent application.

Q. Did he tell you anything about the substance of it, other than to say that the substance was in order?

A. Well, I presume that he must have said something about the claims of the patent. I really can't recall just what he did say.

Q. Is it clear, Mr. Stanford, that at the time you entered into the agreement with Gegauf on April 14, 1956, that you had not seen the Gegauf application which was the subject of that agreement of April 14, 1956?

A. The United States patent application?

Q. Yes, the United States patent application.

A. We had not seen the United States patent application of Mr. Gegauf at the time we entered into the agreement with him.

Q. And had you at that time seen any application of Mr. Gegauf that was the subject of that agreement of April 14, 1956?

[fol. 1177] A. Well, we had seen the Italian patent and also the Swiss patent and also the Gebrauschmuster.

Q. At that time, Mr. Stanford, was there a patent in Switzerland in Mr. Gegauf's possession, or was it merely an application?

A. No, it had issued as a patent at the time we entered into the agreement. There was a patent that I discussed with Mr. Kirker before entering into the agreement with Mr. Gegauf.

Q. And what was there in Germany owned by Gegauf? Was that a patent or an application? I think you used German to describe it.

A. German Gebrauschmuster is a petit patent, and there was, according to Mr. Gegauf, a patent application pending.

Q. The Gegauf 2 patent covers the Singer 319 machine, does it not?

A. Yes, sir, it does.

Q. And when did you receive information that Gegauf had a patent application which would read on the 319 machine?

A. We received that information that an application similar to the one filed in Italy had also been filed in the United States. That was mentioned to us by Mr. Willi, [fol. 1178] the attorney for Mr. Gegauf, shortly after or at the execution of the agreement in 1956.

Q. Am I right in assuming that the Gegauf Italian patent contained subject matter which would read on the Singer 319 machine?

A. Well, it had subject matter which, if properly set forth, would read on the 319 machine, yes.

Q. His invention was there described?

A. Was there described.

Q. What was that invention as described, Mr. Stanford?

A. It was the idea of a plurality of cams with individual followers for each one, any one of which could be moved singularly and to engagement with one of the cams of the stack.

Q. And with a plurality of cams, each one with its own follower?

A. Each one with its own follower, but the followers were operable only one at a time. In other words, you couldn't put two followers down simultaneously.

Q. Is that the subject matter that later developed into Gegauf 2, so-called?

A. It was.

[fol. 1179] Q. So that am I right in assuming that in 1956 Singer had assumed that Gegauf in his United States application, the subject matter of what later became Gegauf 2?

A. Yes, that can be assumed.

Q. I beg your pardon?

(Answer read.)

Q. And is this Gegauf 2 to which we have just referred, or the subject matter of it, synonymous with the divisional claim as contained in the exhibits which were recently discussed by you?

A. Yes, that is correct.

Mr. Elkins: Your Honor, would it be convenient to recess?

The Court: All right. I just want to ask one question, something I would like to clear up in my own mind.

Under the Singer-Sears Roebuck agreement, as evidenced by Government's Exhibit 110, Singer collected by way of royalty in the neighborhood of about $180,000, is that right?

The Witness: Yes.

The Court: Did Singer remit or pay over directly or indirectly any part of the collection of royalties from Sears [fol. 1179a] Roebuck to Gegauf or their designee?

The Witness: No, sir.

The Court: All right, gentlemen, 2:15 Monday.

(Adjourned to May 22, 1961, at 2:15 P.M.)

[fol. 1180] IN UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA

vs.

THE SINGER MANUFACTURING CO.

New York, May 22, 1961, 2.15 o'clock p.m.

Trial resumed

Mr. Pettit: Your Honor, if I could, I would like to have the record note at this time that the defendant has handed to the reporter a list of certain errors which appear in the transcript of Mr. Stanford's testimony, either in questions or answers. A copy of this has been given to the government.

The Court: You had a chance to check them over?

Mr. Elkins: No, your Honor. But we have no objection.

The Court: Let me know by tomorrow——

Mr. Elkins: Yes. We have no objection.

The Court: —if these editorial changes are correct. If you have any objection to them, any specific one of them, we will rule on them.

Mr. Elkins: There is no objection to them, your Honor, subject to their check.

[fol. 1181] The Court: All right. Then we will consider that these changes will be physically made in the transcript, unless you apply to the court for a further correction of the original transcript.

The Reporter: How shall that be handled?

The Court: Just draw an ink line through the word. There is only a word here and there—draw a line through it. The best way would be to take the original transcript, change the word, let the witness put his initials alongside the physical change and there will be no question about it.

All right, is that agreeable?

Mr. Pettit: That is.

The Court: Very well.

Mr. Elkins: We would like at this time, your Honor, to offer in evidence a document of the defendant——

The Court: Wait a minute, Mr. Elkins. We have a witness on the stand.

Mr. Elkins: Yes.

The Court: I have a peculiar rule, and I would like to have that witness's testimony completed. If you want to introduce any documents after that, if it does not concern his testimony, you may then do so after the cross-[fol. 1182] examination and redirect have been completed.

If these documents that you are going to use affect the witness's testimony, you introduce them at the proper time during the course of the cross-examination.

All right, Mr. Stanford, will you take the stand now.

JOEL GIBSON STANFORD resumed.

The Court: You may make a little note of that, Mr. Elkins, and if they become pertinent to your cross-examination, introduce them at that time.

Cross-examination continued.

By Mr. Elkins:

Q. Mr. Stanford, you wrote Government's Exhibit 53, did you not?

(Document handed to the witness.)

Q. And that, as you see, sir, is dated October 30, 1957 and is addressed to Mr. Kirker.

I believe you discussed that the last day you were on the stand, Mr. Stanford.

A. Yes, sir.

Q. And you wrote that, did you not?

A. Yes, sir.

Q. And that was in answer to Mr. Kirker's letter of [fol. 1183] October 25, 1957, Government's Exhibit 52—which I am sure you can find there, sir—the letter of Mr. Kirker is dated, I believe you will see, October 25, 1957.

A. Yes, sir.

Q. Now, Mr. Stanford, can you identify this document——

Mr. Elkins: May I have this marked for identification, please.

(Marked Government's Exhibit 199 for identification.)

[fol. 1184] Q. I show you Government's Exhibit 199 for identification and ask you if you can identify that for us, Mr. Stanford.

A. This appears to be a draft.

Q. That is a draft of your letter to Kirker dated October 30, 1957?

A. Yes, it appears to be.

Q. That appears on the surface of it, does it not, to be the same as Government Exhibit 53 which is your letter to Kirker of October 30, 1957?

A. I do not quite understand what you mean by "the surface."

Q. Well, I asked you, sir, whether or not that was a draft that you had written of Government Exhibit 53 which exhibit is a letter to Mr. Kirker from you dated October 30, 1957.

A. Yes.

Q. That is, the document I just handed you is a draft of that, sir.

A. Yes, that is correct.

Q. This draft has some notations on it written by hand, is that true?

A. Yes.

Q. And referring to the notation on page 1 written by [fol. 1185] hand, that is yours, is it?

A. This writing here (indicating)?

Q. Yes, indicating the writing on the first page.

A. That is correct.

Q. In preparing this draft, sir, would you send it to Mr. Waterman for his approval?

A. Yes.

Q. And did he send it back to you with notations on the last page?

A. Yes.

Mr. Elkins: May I offer this in evidence now, your Honor, that it has been identified by the witness?

The Court: Is there any objection?

Received in evidence.

(Government Exhibit 199 for identification received in evidence.)

Q. Mr. Stanford, I show you Defendant's Exhibit 106B which is the mechanism of the Singer 401 machine. Will you briefly describe, sir, the features of this mechanism?

A. This mechanism has a plurality of cams which are driven by the main shaft of the machine, and it has a follower on this side (indicating) and a follower on this side [fol. 1186] (indicating), and by manipulating these levers you can cause one follower to be immobilized and you can operate the other one to select a cam. If desired, you can use both of the followers to select the cams in the order desired.

Connected with that is a plate called an integrating plate which is carried by a pitman connected to the needle bar so that the motion imparted to the followers by the cams would be transmitted to the needle bar.

Q. Now, sir, I understood you to explain that it has two followers, either of which can track any one cam or in combination can track any two cams, is that right?

A. That is correct.

Q. And if the result of that that information from such cams, a combination of cams, two cams, can be utilized in combination?

A. Yes, that is the purpose of the two followers.

Q. The purpose, you say, is that the two followers can engage separate cams and in that way get a combination of any two of the various cams there?

A. That is correct.

Q. May I show you Government Exhibit 107 which I [fol. 1187] believe is the mechanism of Gegauf No. 1 (handing).

A. Yes, sir.

Q. Will you describe briefly, Mr. Stanford, the features of the Gegauf No. 1 mechanism?

A. That has a plurality of cams which are driven by the main shaft of the machine, with a cam follower which may be positioned so that it will obtain the information from any cam, and that information is transmitted through the mechanism to the needle bar for the purpose of making ornamental stitches.

[fol. 1188] Q. It has one cam follower, Mr. Stanford?

A. Yes, it only has one cam follower.

Q. Now with the number of cams in this mechanism of Gegauf 1—I believe there are 12, is that it?

A. I haven't counted it—I will accept your count—yes, sir.

Q. How many different stitch patterns could be produced with that mechanism, Mr. Stanford—with that mechanism as you see it there?

A. One for each cam, as I see it.

Q. One for each cam as you see it? So that if it has 12 cams it can produce 12 different stitch designs; if it had 7 or 8 cams it could produce 7 or 8 stitch designs?

A. Yes, it would depend on the number of cams built into the machine.

Q. May I direct your attention again to the mechanism of Singer 401 as it appears there before you in Defendant's Exhibit 106-B.

How many different cams does that have?

A. Seven cams plus the removable cam.

Q. Assuming these seven cams mounted in the stacks for the moment, and the fact that the Singer 401 has two followers, how many stitch patterns could be produced or [fol. 1189] different stitch patterns could be produced with that mechanism, forgetting for the moment about the replaceable cam attachments?

A. By using both?

Q. How many different stitch patterns could be produced with a mechanism as you have described it here involving the two cam followers and the seven cams on the stack?

A. That would be something I will have to figure out mathematically.

The Court: How is all this material to your cross-examination? I do not quite——

Mr. Elkins: We will come to the point we want to make very soon, your Honor. We want to show the difference right now between these two mechanisms. It will only take a moment.

The Court: Assuming that there is a difference——

Mr. Elkins: Yes, your Honor.

The Court: —isn't the question here in this case: Did Singer honestly believe that they should acquire these

foreign patents in order to secure their patent position on their own applications, on their own patents? Did they honestly feel that they had reason to fear that their patents would be challenged by Gegauf and Vigorelli?

[fol. 1190] Mr. Elkins: I do not believe, your Honor, that that is in the picture—at least not the part of it that I am confining myself to.

The Court: I don't know what you mean by being "in the picture." That seems to me to be the issue in the case here—but go ahead, if you say it will only take a minute, perhaps it might be just as well to go ahead, so you go ahead.

Q. Mr. Stanford, could you give us an idea as to how many different stitch patterns could be produced with the mechanism as we have described it?

A. Well, I could say more than could be produced on the Bernina machine.

Q. Of the Gegauf 1 mechanism?

A. Yes.

Q. More. And could you give us any idea as to how many more, sir—the maximum that might be produced?

A. Well, whether or not you could combine all of these to produce a satisfactory change in variation of design I couldn't say, but you could play on 2, on 2 and 3, and 3 and 4—it would be a substantial number—I don't know.

Q. And they are used in combination so that you might get something, for example, like 6 times 7 or 42?

[fol. 1191] A. Perhaps.

Q. Directing your attention now, Mr. Stanford, to Defendant's Exhibit 106, which is a Singer 401 machine, and directing your attention specifically to the plate that appears on top of the machine, which gives the different designs, does that give you any kind of approximate idea as to how many stitch patterns can be produced in this 401 mechanism?

A. It shows 20 different variations here.

Q. And that does not employ all possible combinations of cams, does it?

A. No, it does not. Whether or not some other ornamental stitch can be produced by it I am not able to say.

Q. Wouldn't you say that it was substantially more

than 20 different stitch patterns that could be produced by combining any two of seven cams?

A. I would say that you could get variations, twenty variations.

Q. Or more than 20, sir——

A. Perhaps.

Q. —by combining the two?

The Court: All of this is interesting; it might be more interesting to a housewife than it is to me, but I do not [fol. 1192] know what relevance it has to this case: Maybe you can point that out to me so that I can grasp the significance of this testimony.

Mr. Elkins: Right now, if your Honor please.

The Court: All right.

Q. You have described, Mr. Stanford, the Singer 401 mechanism.

A. Yes, sir.

Q. And you have described it as having two followers, a plurality of cams and two followers that could be employed to engage combinations of any two cams.

Now isn't it true, Mr. Stanford, that Singer could exclude sales in the United States of machines having that mechanism as we have just described it by asserting its Johnson patent?

A. As far as the use——

Q. Isn't that true, sir?

The Court: Wait. Let him answer the question.

Mr. Pettit: He should be permitted to answer the question.

The Court: Is there an objection, Mr. Pettit? If not, restrain your impetuosity—and you, Mr. Elkins, let him answer. We will listen to Mr. Stanford's answer—to make it complete.

[fol. 1193] A. As far as the use of two cams on a mechanism of this kind, it could be excluded, but of course you can leave off——

Q. It could be excluded——

The Court: Wait. Please, I want the witness's entire answer.

A. Or you could leave off——

The Court: Don't argue with him. You complete your answer.

A. You could leave off one of the cam followers and then you would have no protection. You could use the same mechanism, using only one cam follower and you would have no protection—no patent protection.

Q. I want to make sure that we understand each other, Mr. Stanford. By asserting the Johnson patent Singer can exclude sales or prohibit sales in the United States of the mechanism like that shown in Defendant's Exhibit 106-B, and, as I say, by asserting the Johnson patent?

Mr. Pettit: Your Honor, I object to that. He has answered that question once.

The Court: We will let him answer it again.

Q. I am talking about a mechanism like the 401 which you have before you, sir, which is Defendant's Exhibit [fol. 1194] 106-B.

A. Only so long as it is not modified to use only one follower.

Q. Sir, if there were a machine sold in the United States which had the same mechanism as the 401 mechanism, which appears before you now, couldn't Singer exclude or prohibit sales of that machine by asserting its Johnson patent?

A. If it were the exact mechanism.

Q. Well, that is what I am saying. A mechanism like——

The Court: No, he says "exact" not "like." "Like" might be a substitute. "Exact."

Q. So it is true, is it not, that the Johnson patent covers the idea in this mechanism of using two followers whereby they may take information from two different cams at the same time and to employ any two cams in combination?

A. Yes.

Q. That is covered by Johnson?

The Court: The answer is?

A. Yes.

Q. And if a machine having that mechanism of two

followers capable of combining the intelligence of two sepa-
[fol. 1195] rate cams was sold in the United States, Singer could prohibit such sales, couldn't it, by asserting the Johnson patent?

A. Yes.

Q. Mr. Stanford, that could be done, couldn't it, whether Singer owned Gegauf 1 or Gegauf 2?

A. It could be done as long as Singer owned the patent.

Q. Owned the Johnson patent.

A. Owned the Johnson patent.

Q. That's right. Now Singer acquired the Gegauf 2 patent application, did it not?

A. It did.

Q. A machine that employed the Gegauf 2 mechanism—and by Gegauf 2 I am referring to the Gegauf patent; that has been commonly referred to by that expression—such a machine would have a plurality of cams, would it not?

A. Gegauf 2?

Q. Yes.

A. Yes.

Q. And the Singer 401 machine uses a plurality of cams also, is that true?

A. That's correct.

[fol. 1196] Q. A machine that employs the Gegauf 2 mechanism would have a cam that could engage any one of the plurality of cams, isn't that true?

A. The Gegauf 2 mechanism?

Q. Yes.

A. Yes, it had a follower for each cam.

Q. Yes, so it would be, as I put it, a cam that could engage any one of the plurality of cams?

A. A cam that——

Q. A cam that could engage any one of the plurality of cams.

The Court: Follower, you mean.

Q. A follower.

A. Follow, yes.

Q. And the answer?

Mr. Pettit: Will you read the question.

(Question read.)

Mr. Elkins: Will you please change "cam" to "cam follower."

Will you read the question as corrected.

(Question read as follows:

"Q. Yes, so it would be, as I put it, a cam follower that could engage any of the plurality of cams?")

[fol. 1196a] Q. Is that true in the Gegauf 2 machine?

A. Yes, sir.

[fol. 1197] Q. That is true of the Singer 401 machine also, is it not, that is, that there is a follower that can engage any of a plurality of cams?

A. Well, there is a difference there. In one case, in Gegauf No. 2, there is a follower for each cam. In Johnson there is not a follower for each cam.

Q. But Gegauf 2 and Johnson have this in common: each has a plurality of cams and each has a cam follower that can engage, in one session or another, a particular cam. They have that in common, do they not?

A. Broadly stated, yes.

Q. Stated broadly as I have stated it, sir, yes.

The Court: But they employ, do they not, a different means to accomplish that result?

The Witness: Yes. One is capable of taking the information from two cams and combining that information to develop a stitch. The other can only take the information from the cam selected.

The Court: And you recognize that in patent law that is a basic distinction?

The Witness: Yes, sir.

The Court: It is not what result the device accomplishes [fol. 1198] but the means employed to accomplish a result.

The Witness: Quite right.

The Court: Mechanical means.

The Witness: Quite right.

The Court: That controls whether or not there is an infringement.

The Witness: Quite right, sir.

The Court: All right. By the way, is Mr. Waterman a lawyer, a member of the Bar?

The Witness: No, he is not, sir.

The Court: Is he a member of the Patent Bar?

The Witness: No, sir. Mr. Waterman is an engineer.

By Mr. Elkins:

Q. Aside from patentable distinctions, Mr. Stanford, is it accurate to say that the Gegauf 2 mechanism has a plurality of cams and that the 401 mechanism has a plurality of cams?

A. That is correct.

Q. And isn't it also true that the Gegauf 2 mechanism and the 401 mechanism—and I am just stating things that they have in common—have a cam follower means whereby any one cam may be selectively engaged?

A. Yes.

[fol. 1199] The Court: Was the employment of a plurality of cams a device or a means well known in the art?

The Witness: Plurality of cams?

The Court: Yes.

The Witness: Broadly speaking, a plurality of cams was known, but the particular mechanism to be used with it for operating the needle bar or for vibrating the needle bar was new.

The Court: And therein lay a claim for invention.

The Witness: Yes.

By Mr. Elkins:

Q. The Singer 319 machine, Mr. Stanford, employs a plurality of cams, each one of which has its own follower; is that true so far?

A. That is true, sir.

Q. And the mechanism of the 319 machine also makes it possible to engage two or more cams at the same time in order to combine their intelligence; is that true?

A. That is possible with the 319 machine, yes.

Q. Is that mechanism, as we have described it, covered by the Singer Perla patent? And you may describe it again, if you like.

[fol. 1200] A. The Perla patent covers the idea of the

plurality of cams with independent followers for each cam and a handle on each follower so that they can be moved up either in combination or individually.

Q. And does Perla also provide for a means whereby intelligence of two or more cams may be simultaneously employed?

A. That is correct. It does, sir.

Q. Singer, then, can exclude from sales in the United States a machine with the mechanism as you have just described it by asserting the Perla patent; isn't that true?

A. Yes.

Q. Mr. Stanford, I would like to direct your attention to Government Exhibit 179, which is the Perla patent, and to page 1 thereof, and I would like to direct your attention to Government Exhibit 183 and to page 1 thereof, and this Government Exhibit 183 is, as you see, the Johnson patent, is it not?

A. Yes, this is the Johnson patent.

Q. Here is the Johnson patent and also the Perla patent. The Johnson patent relates to the 401 mechanism and the Perla patent relates to the mechanism of the Singer 319 machine, isn't that true?

[fol. 1201] A. Yes. One is the 401 and one is the 319.

The Court: Is it the 319 or the 306?

Mr. Elkins: 319, your Honor.

The Court: The 306 was——

The Witness: The one with the removable cam.

The Court: All right.

By Mr. Elkins:

Q. Now, sir, both paragraphs to which I have directed your attention, one in the Johnson patent, the other in the Perla patent, read exactly the same, do they not?

A. Yes.

Q. They are in common, is that right, sir?

A. They relate to the same thing, yes. They set forth——

The Court: What paragraph are you pointing to, so we can identify it? Page 1, column 2 or column 2?

Mr. Elkins: Column 1.

The Court: What lines? There are little numbers there on the side.

Mr. Elkins: 15 to 20, your Honor.

The Court: That is the opening paragraph.

Mr. Elkins: That's right, your Honor.

[fol. 1202] The Court: They are identical, apparently; identical language.

By Mr. Elkins:

Q. And that language, for the record, reads, does it not, Mr. Stanford:

> "This invention relates to improvements in ornamental stitch sewing machines and has for an object to provide such a machine with a novel mechanism whereby the machine can be made to produce a large number of ornamental designs without any change in the construction of the machine."?

The Court: That is what we call boiler plate. You pull that out of the case and put it in for other paragraphs. It means nothing. It is like the lawyers pick out a paragraph that they put in every brief they hand the judge. It is boiler plate.

Mr. Elkins: My point here, your Honor, is the fact of the similarity, to the extent that there is a similarity, between the Singer 319 machine and the Singer 401 machine and the material which both have in common.

Mr. Pettit: Your Honor, I would like to just interpose one objection here unless he indicates for the record that he is not reading from a claim of either patent. I don't think he [fol. 1203] has indicated yet where this reading comes from.

The Court: He is reading right from the description. It is apparent that Mr. Stanford's name is signed as the patent attorney on both of the patents.

Mr. Pettit: That is correct.

The Court: And he used a boiler plate, like a lawyer picking some boiler plate out and putting it in the brief he gives to Judge X and then giving the same boiler plate to Judge Y, hoping they both don't notice it is boiler plate.

Mr. Pettit: I just want the record to indicate that he is not reading from a claim.

The Court: No, it is the opening paragraph. He does not say it is in the claim.

Mr. Elkins: We do not agree with your Honor that this is boiler plate. It relates to a patent and cannot be boiler plate.

The Court: You can give it another name that is more fancy than that, but that is the effect of it. Mr. Stanford wrote both of these applications, his name is signed as the patent attorney, and I guess he said to his girl, "Copy that first paragraph," the same as you would say, "Copy this [fol. 1204] page and this paragraph from this brief."

Mr. Elkins: If your Honor please, indicating, if you will, what the two machines had in common or at least certain phases of the two machines which were in common, and we will try to tie that point to something else in just a moment.

By Mr. Elkins:

Q. The mechanism of the Perla machine and the subject matter of the Perla patent as you have described it, Mr. Stanford, uses——

The Court: I don't like to interrupt you, but you might notice that the next paragraph is also identical in both patents, so it is not just the first; it is the first two paragraphs. He used more boiler plate than I thought he did. Look at it and you will see. The first two paragraphs in both of these patents, the Perla patent and the Johnson patent, are identical, and I guess, if I went through it, I could find more.

You can get back now.

Mr. Elkins: We are still on the point, your Honor, of pointing out the common ground of the similarities of these two machines.

By Mr. Elkins:

[fol. 1205] Q. The 319 machine of Singer, like the Singer 401 machine, has the ability, has it not, of employing intelligence from various cams at the same time?

A. It does.

Q. If any machine was sold in the United States that had the mechanism of the 319 machine and that part of it which involved the mechanism as we have just described it, that is, the idea of using a plurality of cams, a cam follower for each cam, means whereby intelligence of two or more different

cams could be taken at the same time by two or more of the followers, Singer could, could it not, prevent its sale by the assertion of the Perla patent?

A. I think the Perla patent is limited to having individual handles, as I recall it now, for each cam follower.

The Court: Look at 4 and 6 of the statement of facts (handing). I think you are a little confused.

Suppose we have a five-minute recess.

(Recess taken)

[fol. 1206] Q. The embodiment of two followers having the ability to combine intelligence from two different cams at the same time is a significant embodiment, is it not, Mr. Stanford?

A. I would say it is more a remnant because it does not go to the basic idea of selecting a cam. In other words, the basic patterns of the 401 are the ones that are selected from a single cam at the time.

Q. There is a basic feature, is there not, and I have asked you this before and I will ask you once more, of using two followers in Johnson in order to combine information from two or more cams in order to get a greater variety of stitch patterns than you would get in the Gegauf 1 mechanism?

Mr. Pettit: Your Honor, I suggest that there is a limit as to the number of times he can ask him the same question.

The Court: Let him ask it again. It might impress the court. Constant repetitions sometime serve that purpose.

Q. The 401 has that feature, sir?

A. Yes, it has that feature.

Q. Thank you very much. And that feature, as you described it or as we described it is, of course, a patentable [fol. 1207] feature, is that true?

A. That's correct.

Q. Am I right in understanding, Mr. Stanford—and correct me if I am wrong—that the reason for Singer, according to what Singer now says, in acquiring the Gegauf 1 patent was to prevent infringing machines from being sold which were competitive with the Singer 401 machine?

Mr. Pettit: Just a moment.

The Court: We will strike out "according to what Singer

now says." With that deleted, the question may be answered.

Mr. Pettit: And may he read it to the witness?

The Court: Is that what you are objecting to?

Mr. Pettit: Yes, that is it.

The Court: All right.

(Question read as follows:

"Am I right in understanding, Mr. Stanford—and correct me if I am wrong—that the reason for Singer in acquiring the Gegauf 1 patent was to prevet infringing machines from being sold which were competitive with the Singer 401 machine?")

A. The purpose in acquiring it was to protect the investment and the jobs that we had here——

[fol. 1208] Mr. Elkins: Now——

The Court: Wait. Let him finish his answer. If you don't like it, you may move to strike it out.

A. —and the realization that the mechanism here could be duplicated if you leave off a second cam follower or if you immobilize it even.

Mr. Elkins: If your Honor please, that answer is not responsive to the question.

The Court: I think it is.

If you want a categorical answer, we will try to get it for you, but I think it is responsive. It is very informative, in any event.

What was the purpose of Singer acquiring the Gegauf No. 1?

The Witness: Gegauf No. 1 covers the idea of a single cam follower which may be engaged with any of the cams. Johnson has that feature in it. If you take off the second follower or if you immobilize it, then you have to be protected by the Gegauf patent; otherwise there would be no infringement.

The Court: What was the reason or the motive behind Singer acquiring the Vigorelli patent?

The Witness: We did not acquire——

The Court: Getting a license on the Vigorelli patent.

[fol. 1209] The Witness: In that case, in foreign countries

Vigorelli had covered the idea of two cams being sensed at the same time and imparting that information to the needle bar.

Also in certain foreign countries they had priority on the single follower in which you could select a cam.

The Court: What was the reason that prompted Singer to acquire a license for Gegauf No. 2?

The Witness: In Gegauf No. 2 we had—that covers the Messerschmitt machine, and we had reached an agreement with Messerschmitt in 1957 that was very important to Singer. We were selling about 65,000 machines in Europe of the 319 type which was covered by the Messerschmitt patents in Europe, and so we licensed them in the United States under our patents—the Perla and the Way patent, and as Gegauf No. 2, when issued, would cover that intelligence, they would no longer be able to manufacture it in the United States without the possibility of it infringing the Gegauf No. 2 patent, so we acquired that patent.

Mr. Elkins: Mr. Stanford, isn't it true that a machine that was built under Gegauf 1 would be no more competi-
[fol. 1210] tive as to Singer's machine 401 than would a machine built under Gegauf 2?

The Witness: You are asking me, sir, a sales question. You are asking me——

The Court: What do you mean by "competitive"? Competitive in what way? It is not a term of art in patent law.

Q. The only difference between the Gegauf 1 mechanism and the Gegauf 2 mechanism is that in Gegauf 1 there is one follower which selects any one cam, and that in Gegauf 2 each cam has its own follower? Isn't that the essential difference?

A. That is the essential difference.

Q. Do you wish to give the impression that a Gegauf 1 machine would be greater competition as against the Singer 401 than the Gegauf 2 mechanism?

Mr. Pettit: Your Honor, I object to that question because he has given no testimony on that and no inference on that. If counsel wants a market man, we will have him on the stand—probably next.

The Court: We will let this witness answer it if he can. Objection overruled.

Mr. Pettit: It seems to me he should be qualified as to whether he is a market man.

[fol. 1211] The Court: If he cannot answer it he will say so.

The Witness: Do you mind repeating the question?

(Question read.)

The Court: By that I take it he means sales competition in the marketplace.

A. I am sorry. I couldn't answer that question. I wouldn't know.

Q. Well, all three mechanisms employ a plurality of cams, don't they?

A. Yes.

The Court: We have had that five times now.

Q. And all of them employ a means whereby a cam follower engages one of the plurality of cams, isn't that true?

A. Yes.

Q. All three produce, through the use of the cam and the follower, zigzag stitch patterns and ornamental stitch patterns?

A. Yes.

Q. And in all three the operator may change from one stitch pattern to another stitch pattern without replacing a cam; isn't that true?

A. That's true.

[fol. 1212] Q. Do you still say that Singer acquired the Gegauf 1 patent to assert it for exclusion but that it did not buy the Gegauf 2 patent for exactly the same purpose?

The Court: Objected to as argumentative in form—by the court.

But we will let the witness get in the argument and answer it.

Mr. Elkins: A very sound objection, your Honor.

The Court: You can answer that question if you can.

Do you want the question read back?

The Witness: Yes.

(Question read.)

A. It was not for exactly the same purpose.

Q. May I direct your attention to Government's Exhibit

180, Mr. Stanford. May I direct your attention there to page 47 and page 48.

(Document handed to the witness.)

The Court: Suppose we have on the record what Exhibit 180 is. What is Exhibit 180?

Mr. Elkins: This exhibit, as I described it, is the——

The Court: The Perla file?

[fol. 1213]. Mr. Elkins: —Perla file wrapper.

A. This is page 49 that you are referring to—page 49?

Q. I believe I referred to page 47 and 48.

At page 47 of the Perla file wrapper, that shows a petition to make special, does it not?

A. Yes, it does. This is a petition to make special.

Q. And it was signed, I believe, by Mr. Williams of the Singer patent department.

A. That's correct.

Q. And may I direct your attention, sir, to page 49 of the same exhibit, which is an affidavit in support of a petition to make special?

A. Yes.

Q. That is an affidavit by persons in the Singer organization, is it not?

A. Yes, an affidavit by Mr. Perla.

Q. And on page 51 there begins an affidavit in support of the petition to make special, which is signed by Mr. Williams?

A. Yes, sir.

[fol. 1214] Q. This affidavit, referring to the one by Mr. Williams, refers, does it not, to sale in the United States or sales in the United States of a German-made sewing machine which is sold under the name and style of Bell-Messerschmitt.

The affidavit also states, does it not, that such a machine is within the claims of the subject matter of the Perla application?

A. Yes.

Q. And isn't the plea for the Patent Office to make this Perla application special in order to enable Singer to exclude the type of machine there referred to?

A. That, of course, was to get into an interference with Messerschmitt if Messerschmitt had an application pending in the United States. Yes, we were anxious to get this out for that purpose.

The Court: What is the purpose of a petition to make special?

The Witness: Your Honor, when an application is pending in the Office, and there may be another application pending, and you feel there is, and you have a large investment and expending a considerable amount of money, you petition to make special so that the Office will act on that on an earlier [fol. 1215] date than they will normally act, and in so doing secure the allowance of claims which can be put into interference with the other party if he has a pending application claiming the same subject matter.

In short, it is a petition for an early action on the cases to determine the rights of the parties.

Q. Directing your attention again, sir, to page 51 of this same exhibit—and that is, again, the affidavit of Mr. Williams; is that true, sir?

A. Yes, this is the affidavit of Mr. Williams.

Q. Isn't it so, that in support of his application to make special, he sets forth four reasons why he believes that the subject application should be made special and that the prosecution thereof should be expedited as much as possible?

A. Yes.

Q. And reason No. 1, do you agree, is that since the filing of the Perla application there is introduced for sale in the United States a German-made sewing machine sold under the name and style of Bell-Messerschmitt; isn't that true?

A. That is in substance what he says.

[fol. 1216] Q. Yes. And isn't it true that the substance of the second reason, labeled there No. 2, that he examined the machine and found that it had a mechanism which was similar in design and function to that disclosed and claimed in the Perla application?

A. Yes, that is the second reason.

Q. And reason No. 3 is in his opinion many other claims then contained in the Perla application would be infringed by the Bell-Messerschmitt machine?

A. Yes.

Q. And the further reason that he believes that the Perla application contains claims which are allowable; is that right, sir?

A. That is right.

Q. Is there anything in there, Mr. Stanford, assigning as a reason for this petition to make special anything about Singer trying to get into an interference with Messerschmitt?

A. No, but that is the purpose of it.

Q. I beg your pardon—no?

A. No.

The Court: That is the result of the petition to make special, isn't it?

The Witness: Yes, to get the Patent Office——

[fol. 1217] The Court: It brings up the question of interference.

The Witness: Yes.

Q. The Perla application there referred to had a mechanism involving, as we have said, a plurality of cams and a number of followers, one for each cam?

A. Yes.

Q. And you wanted to push for an interference between that Perla application and something that Messerschmitt might have filed in the United States?

A. Yes, we wanted a determination of the rights of Singer under its patent as early as possible because we were manufacturing the machine here in the United States.

Q. Mr. Stanford, Gegauf 2 or the subject matter of Gegauf 2, in relation to that of your Perla application, could have afforded you an interference, could it not?

A. If we had owned it?

Q. If you had owned it? You did own the Perla application, did you not?

A. Yes. I am sorry. I thought you said "Gegauf."

Q. I am talking about the subject matter of Gegauf 2, yes. Isn't there subject matter——

The Court: He said: yes, if they had owned Gegauf 2 at [fol. 1218] the time. That was his answer. But they did not own Gegauf 2 at the time.

Is that correct?

The Witness: That is correct.

Q. Gegauf owned it, isn't that true?

A. Yes.

Q. It was pending in the United States Patent Office, was it not?

A. The application?

Q. Yes.

A. For this feature?

Q. Yes.

A. Not to my knowledge, no, sir. It was in the claims of another case, but no application had been filed on this particular feature.

Q. No application had been filed by Gegauf on that particular feature?

A. By Gegauf on this particular feature. That was not filed until 1957, if my memory serves me correctly.

Q. It was not filed until that date, if your memory serves you correctly, as a divisional application.

A. Yes.

Q. But isn't it true that the subject matter of it was con- [fols. 1219-1221a] tained in the Gegauf patent application that was pending in the United States in May, 1956?

A. The claims in Perla were quite narrow. You have to consider that the Messerschmitt machine and the Perla machine or the 319 machine were practically identical. They had the little levers, they had the little keys on top, and they were spring urged, and they could select any of the cams either individually or collectively.

Q. Can we move away, sir, if you will, please, from the machine into the Perla application? And wasn't there subject matter in the Perla application that belonged to Singer that was common to subject matter that was contained in the Gegauf United States patent application? I don't care whether it is a divisional claim or not, sir.

A. Was there subject matter——

Q. In the Singer Perla patent application in the United States that was common to subject matter contained in the Gegauf United States patent application?

A. Yes, I think that is true, sir.

Q. Was the Gegauf 2 and Singer's Perla application ever in interference in the United States Patent Office?

A. Not to my knowledge.

[fol. 1222] IN UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA

vs.

THE SINGER MANUFACTURING COMPANY

May 23, 1961, 10:30 A.M.

JOEL G. STANFORD resumed.

Cross-examination Continued.

By Mr. Elkins:

Q. Isn't it true, Mr. Stanford, that neither Gegauf 1 patent nor the Gegauf 2 patent—and I am speaking of the United States patents—relate to combining intelligence from two or more cams?

A. That is correct.

Q. And that therefore the mechanism of each Gegauf 1 and Gegauf 2 gives only one design per cam?

A. That is correct.

The Court: You mean one cam follower, do you?

Mr. Elkins: No, one cam. If it has six cams you get six designs.

If it has eight cams you get eight designs.

The Court: Oh, I see, you mean stitch designs?

Mr. Elkins: Stitch designs.

The Court: Excuse me.

Mr. Elkins: Excuse me, Judge.

[fol. 1223] Q. And it is true, is it not, Mr. Stanford, that both the Johnson patent and the Perla patent relate to combining cam intelligence in order to obtain a number of stitch designs in excess of the number of cams employed in the respective units?

A. That is correct.

Q. Sir, you are acquainted with the Singer-Messerschmitt licensing agreement?

A. Yes.

Q. Under that agreement, which is Government's Exhibit 86, Singer did not license Messerschmitt under any specified patents, did it?

A. No. It licensed the subject matter disclosed in a series of drawings.

Q. That is right, and the agreement reads that Singer will not bring any infringement action against Messerschmitt under the rights derived from patents now issued or to be issued in any country with respect to the subject matter disclosed in the three drawings, to which you have just referred; that is true?

A. That is correct.

Q. And are these the three drawings, Mr. Stanford, referred to in the agreement (handing witness)?

A. Yes.

[fol. 1224] Q. One of those drawings covers a manually operated machine, does it not?

A. Yes, it does.

Q. And another covers a replaceable cam machine?

A. May I see the other one?

Q. Yes (handing).

A. Right.

Q. A straight stitch machine?

A. One is a straight stitch machine and one is a manually operable zigzag machine.

Q. So as to those you just mentioned, they had nothing, absolutely nothing to do with the Perla application of Singer, did they?

A. No, the straight stitch and the manually operable had nothing to do with the Perla application.

Q. So that as far as the consideration for this agreement, which is furnished by Singer, Singer agreed not to sue Messerschmitt any place in the world on any patents it owned any place in the world relating to the straight stitch machine and the manually operated zigzag machine?

A. There was a German patent on the manually operable zigzag machine, and of course the Way patents on the motor support.

[fol. 1225] The Court: Which one is the machine-operated? Is it 54 KE? On the lower right corner are the numbers.

The Witness: Yes, 54 KE.

The Court: That is the one that you were slightly interested in, is that correct?

The Witness: Yes.

By Mr. Elkins:

Q. That is the one that uses the built-in cams?

A. Yes.

Q. And the drawing designated as K1 52 KE is which machine?

A. That is the manually-operated zigzag machine.

Q. And the other drawing designated as K1 53 KE is the straight stitch, is that true?

A. Yes, sir.

The Court: Is it entirely straight stitch? Isn't that a cam shown there in the Ruckseite, as you call it?

The Witness: I think that is the belt drive, your Honor.

The Court: The belt drive. Yes, you are right. Excuse me.

Q. In addition to what Singer supplied to Messerschmitt [fol. 1226] by way of consideration under this license, it is also true, is it not, that claims issued to Singer on the Perla application in the U. S.?

A. In the United States. Yes, Perla obtained claims in the United States.

Q. And Messerschmitt, at the time of this agreement, had a machine that was covered by, at least to some extent, the Perla patent as it ultimately issued?

A. Yes.

Q. And under this agreement Messerschmitt received all rights to that?

A. They were privileged to make that in the United States.

Q. In the United States. This agreement also provides, does it not that Singer would not institute any opposition, nullity or invalidation proceedings against the Messerschmitt applications?

A. Yes.

Q. And it also provided that Singer would immediately withdraw any such proceeding if it had already been instituted?

A. Yes, with a provision.

Q. With a provision, sir?

A. That if they became involved in Patent Office priority [fol. 1227] determining proceedings, such as a United States interference or Canadian conflict proceeding, then both par-

ties would work together to settle it in accordance with the laws and regulations of the Patent Office concerned.

Q. Relative to the proceedings whereby Singer agreed not to institute an opposition, nullity or invalidation proceeding or to immediately withdraw it if such had been already instituted, Singer did, indeed, pursuant to that promise, withdraw an opposition to a Messerschmitt application?

A. Yes, as I recall, it did.

Q. And that was in Germany, do you recall, Mr. Stanford?

A. That is my recollection, yes.

Q. Can you say definitely that it occurred?

A. I would prefer to have my memory refreshed.

Q. All right, sir, we will do it.

I refer you, Mr. Stanford, to Government's Exhibits 82, 91 and 92 (handing).

A. Yes.

Q. That refreshes your recollection?

A. Yes.

Q. So that subsequent to this Singer-Messerschmitt agree-
[fol. 1228] ment as we have discussed it, Singer did perform under the section to which we have just referred by withdrawing an application?

A. Withdrawing an opposition.

Q. Withdrawing an opposition. I am sorry.

A. Yes, Singer did withdraw its opposition proceeding.

Q. And pursuant to the agreement, sir?

A. Yes, pursuant to the agreement.

Q. Didn't Singer also provide, as further consideration to Messerschmitt, rights under other patents other than Perla? The Way patent?

A. The opposition proceeding in Germany related to a construction in which the manually-operable means is shown to be old in the old 206 machine, and that patent had just about expired, and that was the one that we withdrew in Germany, as I recall.

Now I am sorry, I may not have answered your question directly.

Q. Perhaps not, but under this Singer-Messerschmitt agreement as we have discussed it here, Government's Exhibit 86, Singer gave rights to Messerschmitt on any patents it had covering the three machines which were demonstrated by the attached drawings which we have already discussed?

[fol. 1229] A. Yes.

Q. And as well as involving Perla and also involving the Way patent, did they involve any other patents?

A. The Way and the Perla——

Q. And the Tiesler patent?

A. Tiesler?

Q. Tiesler.

A. Tiesler German patent, but that had nothing to do with the United States.

Q. No. But it had to do with the agreement, and Singer gave rights to Messerschmitt under that?

A. That's right.

Q. The Messerschmitt machine involved combining intelligence from two or more cams, is that true?

A. It had that particular feature in it.

Q. Your Johnson patent has a subject matter which involves taking intelligence from two cams at the same time?

A. That's correct.

Q. As well as having the Johnson patent in the United States, you also had filed, I believe, corresponding patents in other countries?

A. Yes.

[fol. 1230] Q. And do you know in how many other countries, sir?

A. I couldn't say offhand, no.

Q. Well, would you say in all of the principal countries?

A. I would say the principal manufacturing countries, yes.

Q. So this Singer-Messerschmitt agreement that we are now discussing also gave to Messerschmitt rights under the Singer Johnson patent, do you believe?

A. In the United States. In foreign countries the Johnson patent was behind the Vigorelli patent on sensing two cams simultaneously.

[fol. 1231] Q. But as a result of this agreement, Government's Exhibit 86, Singer did supply Messerschmitt with rights under the Johnson patent?

A. In the United States.

Q. In the United States?

A. Yes, in the United States.

Q. And this agreement, Singer-Messerschmitt, Government's Exhibit 86, as we have noted, provided that Singer gave rights to Messerschmitt relative to those drawings on

patents now issued or to be issued in any country. That is true.

A. (Examining) "Now issued or to be issued", that is correct.

The Court: With respect to the annexed drawings?

The Witness: Yes.

Mr. Elkins: That is right.

Q. So that whatever Johnson got in a foreign jurisdiction would be there for the use of Messerschmitt in relation to its machine?

A. If Johnson——

Q. If Johnson got anything. Now during the meetings between Singer and Gegauf relative to the assignment of [fol. 1232] his United States patent applications to Singer, Singer or its representatives told Gegauf, did it not, that his applications were weak standing alone?

A. That is in the correspondence.

Q. Would you answer that—all right, go ahead and answer it with a "Yes" or "No", please.

A. May I have the question read back? I do not know that it can be.

(Question read.)

A. I do not know that that was ever told Mr. Gegauf.

The Court: Did you tell him that his applications, his United States applications were weak, without telling him anything about "standing alone", in your opinion?

The Witness: When we originally negotiated for the license agreement we naturally took the position that in his negotiations any patents that he would get or any patents that he received in foreign countries were weak.

Mr. Elkins: May I ask you to read, Mr. Reporter, the witness' answer to my question?

(Record read.)

[fol. 1233] Q. Didn't you have good reason to believe that it had been told to Mr. Gegauf, Mr. Stanford? Didn't you have good reason to believe that it had been told to Mr. Gegauf?

A. It appeared in the correspondence, sir, and I was not present at any time during this discussion where those words were used.

Q. When you say "I do not know that that was done", are you using an extremely high test for yourself, and are you merely saying that you were not present when it was done?

A. All I can say, sir, is it is in the correspondence.

The Court: Did you mean by your answer that it was not done within your personal knowledge or in your presence?

The Witness: That is exactly what I mean, within my personal knowledge.

The Court: Or in your presence?

The Witness: Or in my presence.

Q. But you have seen, heard or read something that indicated to you that it had been done?

Mr. Pettit: I object to that, your Honor, unless he shows him some document referred to.

[fol. 1234] The Court: Objection sustained.

Q. Well, hadn't you been told that it was done?

A. Have I been told that that was done?

Q. Yes.

A. Have I personally been told?

Q. Yes, by anyone in Singer—by Mr. Waterman or anybody, that it was done.

A. No, I don't know that Mr. Waterman ever said it was done.

Q. But you were told by Mr. Waterman that he, Mr. Waterman, had instructed Mr. Kirker to so inform Gegauf; is that true?

A. As I recall, there is a cabl gram that has those words in it.

May I see the document, sir?

Q. I believe you are referring to Government's Exhibit No. 50. I show it to you (handing witness).

A. (After examining) Yes, it says that.

Q. That is, you were told by this cable from Mr. Waterman that Mr. Waterman had told Kirker to tell Gegauf that his, Gegauf's applications——

Mr. Pettit: Your Honor——

Q. —were weak standing alone?

Mr. Pettit: I object to that statement. It is a complete [fol. 1235] misquotation of the cablegram. It is a complete misquotation of the testimony.

Mr. Elkins: I doubt that very much.

Mr. Pettit: Will you read the cable?

The Court: Why don't you quote the cablegram?

Objection sustained.

Q. In this cable from Mr. Waterman to you, Mr. Stanford, which is stamped—apparently a receipt stamp by Singer, dated October 24, 1957—Mr. Waterman said "Again Emphasized for Kirker to Tell Willi that Application and Division Is in Our Opinion Weak Standing Alone".

Is that true?

A. Yes, that is true.

Q. And the "Willi" referred to is the patent attorney for Mr. Gegauf; true?

A. That is true.

The Court: That is that famous "leak" business which you now accept to be "weak", is it?

Mr. Elkins: We find that "weak" is just as synonymous as "leak".

The Court: I mean the sinister aspect of "leak" has now disappeared; it is now "weak" which you say is just as [fol. 1236] sinister as "leak"?

Mr. Elkins: We say that neither one changes the substance of the message, your Honor.

The Court: All right, but I recall that you made quite a point of this, in your description of this telegram as to its significance. Now apparently you have abandoned that, have you?

Mr. Elkins: No, your Honor. I was just about to say that we would have made the same point had a copy of it demonstarted the "w" above the "l". If our copy said "weak" I do not think we would have changed any of our comments in relation to it.

The Court: I think I understand the situation perfectly.

Mr. Elkins: You understand, your Honor, this was the document to which the defendant suggested perhaps impro-

priety on the part of the government because we said at the time one copy that we had of the cable had no "w" appearing there, that a man with less than 40-40 sight could see —or 20-40, I should say.

The Court: You want me to read this as "weak"?

Mr. Elkins: "Weak", yes, your Honor.

The Court: All right, as long as I know what you want me to do.

[fol. 1237] Mr. Elkins: The other copy shows that the "1" was crossed out a "w" written over it.

The Court: All right.

Q. Do you recall, Mr. Stanford, that you, shortly prior to October 24, 1957, were in Europe with Mr. Waterman, that is, shortly before Mr. Waterman sent this cable to you?

A. Yes, we were in Europe together.

Q. And it was just a few days, was it not, prior to the receipt of this cable from Mr. Waterman?

A. Well, I couldn't say how many days, sir, but it was some time prior to the receipt of this cable.

Q. And during that time you were with Mr. Waterman and you were with Mr. Kirker and you were negotiating with Mr. Gegauf?

A. That is correct.

Q. As you recall?

A. Yes, sir, as I recall.

Q. And then do you recall when Singer thought that it was pretty close to an agreement, I believe you came home and Mr. Waterman went to Frankfort and Mr. Kirker was to take over and to talk with Mr. Gegauf and to work out the final agreement; is that accurate?

A. Mr. Kirker was not present during the discussions [fol. 1238] with Mr. Gegauf. We left Zurich and went to Geneva and presented to Mr. Kirker the form of the agreement and asked him to see Mr. Willi and get his approval of them.

Q. Prior to doing that you had discussions with Kirker, did you not?

Do you recall, sir, that you went over to Europe, I believe with Mr. Waterman, and before sitting down and talking with Gegauf you had discussions—and correct me if I am wrong—with Mr. Kirker?

A. Yes. That was prior to the agreement with Mr. Gegauf.

Q. Wasn't it prior——

A. Prior to the license agreement with Mr. Gegauf.

Q. For the purposes of possibly refreshing your recollection, Mr. Stanford, I would like to show you Government's Exhibit No. 48, which has a date or two in it (handing witness), and I ask you whether it refreshes your recollection concerning you having conversations with Kirker in October, 1957, on or about the 15th or 16th, prior to the time that you started to negotiate in that month wih Mr. Gegauf?

A. This only says that he is free, and if we had called him—as I recall, this refers to the fact that we were going to [fol. 1239] see Mr. Gegauf but Mr. Willi, his attorney, could not be present, so we did not ask Mr. Kirker to come from Geneva to Zurich and be present at the meeting, so at the meeting or prior to the meeting we did not see him. We saw him after the meeting, as I recall.

Q. Now in the cable to which we have previously referred, which is Government's Exhibit 50, you will note that in the particular part of it that we quoted, Mr. Waterman wrote again "Again emphasized" (handing witness).

(The witness examines)

Q. Isn't that true?

A. Yes, this says "again"—"again".

Q. "Again emphasized"—"Again emphasized for Kirker to tell Willie that application and division is in our opinion weak standing alone".

A. That is what the cable says. Kirker may have said that at that time.

Q. Mr. Waterman is speaking for himself when he says "again emphasized" for Kirker to tell Gegauf this, is he not?

A. I don't know.

Q. This cable, in saying what it does about the Gegauf [fol. 1240] application and division being weak standing alone, has reference, does it not, according to your understanding, to Singer's patents and applications—patent applications?

A. No. This to me was—Mr. Waterman apparently must have been irritated over the fact that Gegauf is making all kinds of demands after he——

Q. I do not believe that that is an answer to the question.

The Court: Why don't you let him finish his answer? If you do not like it, move to strike it out. We do not have a jury here.

Go ahead, finish your answer.

A. (Continuing) Mr. Waterman must have been irritated over the fact that he thought he had reached an agreement with Mr. Gegauf. Mr. Gegauf had turned around and started making all kinds of demands here and there, and in order to throw up some defense of some kind, he said he may—I don't know just what it means—he says "Tell him the patents are weak standing alone".

[fol. 1241] Mr. Elkins: I move that that be stricken, your Honor. I think that hidden in there some place is the answer "I do not know what it means."

The Court: That's right. It is just an expression of his belief, and we will let it stand as simply that. It is his opinion and not his knowledge of the fact.

Q. Was your understanding of the matter clarified at all by this paragraph in Government's Exhibit 199, which is a draft dated October 29, 1957, sort of a proposed letter by you to Mr. Kirker, and by this paragraph on the last page which is written in pen as a possible insertion into the letter:

> "We are only repeating when we say again that standing alone we are still of the opinion, even after have examined the file at Washington the patents ultimately secured are of doubtful value, but that in conjunction with others that we have, they assume greater worth, and then only after we have expended a considerable sum to prove their worth."

You have stated, and as it appears, this was a letter going to Mr. Kirker, who then was, I believe you will agree, talking with Mr. Gegauf on behalf of Singer relative to the trans-

[fol. 1242] fer of the Gegauf patent applications to Singer.

A. Yes, this is a letter, draft of a letter, proposed letter, to Mr. Kirker.

Q. And didn't that give you an idea as to what this talk about the Gegauf patent applications standing alone being weak meant?

A. Well, I didn't agree that it was correct and canceled it out and didn't send it over to Mr. Kirker.

Q. Do you agree, sir, that when it states, as it does, "We are only repeating when we say again that standing alone we are still of the opinion, even after have examined the file at Washington the patents ultimately secured are of doubtful value, but that in conjunction with others that we have, they assume greater worth, and then only after we have expended a considerable sum to prove their worth," clearly demonstrates it has all been said to Kirker before?

A. Yes, I think you could say that from it, but this is simply a bargaining proposition.

Q. That's all that I am asking you for, Mr. Stanford. The arguments, I suppose, will be made by able counsel.

The Court: Well, this is the time for interrogation not [fol. 1243] for speeches and not for opinions of this witness either or what he thinks. Next question.

Q. Mr. Stanford, I believe you described the main function of the Singer patent department as to examine machines of Singer to determine whether or not they conflict with any patents known to you.

A. Yes, sir, that's correct.

Q. Do you mean that the patent department waits until the machine is actually made before it gives an opinion?

A. No, sir. The patent department sees the machines as soon as they are in their infancy, when they are just beginning, the concept is started, and then we follow that all the way through until its final form in which we expect to manufacture it, and anywhere along the line we make suggestions or call attention to patents which may be infringed, and ultimately, when the machine is in its final form, we write a report which reports the condition to the company at the time that they are deciding to begin to manufacture or to adopt the machine, as generally we call it.

Mr. Elkins: May we have a five-minute recess, your Honor, at this time?

The Court: Yes.

[fol. 1244] (A short recess.)

By Mr. Elkins:

Q. Mr. Stanford, as I recall your testimony, and correct me if I am wrong, you testified that the decision to proceed before the United States Tariff Commission that was made

on the basis of patents was made by Singer in about May 1958.

A. Yes, that's correct, yes.

Q. Did you have anything to do with the formulation of that decision?

A. Did I?

Q. Yes.

A. I would have to ask you, sir, what you mean by formulation of the decision.

Q. Well, let me change it to: Were you in on any discussion relative to so proceeding?

A. Yes, I was.

Q. And there were conferences relative to the matter, were there?

A. With the attorneys, yes.

Q. When you say with the attorneys, you mean the attorneys whom you mentioned the other day, Mr. Brumbaugh, I think?

A. Mr. Brumbaugh and Mr. Colburn.

[fol. 1245] Q. Was there discussion among representatives of Singer as to whether or not you would go to other counsel with this matter of possibly proceeding before the Tariff Commission?

A. They were the counsel, sir. Mr. Brumbaugh and Mr. Colburn were the counsel.

The Court: I think we had testimony that Mr. Brumbaugh recommended this man Colburn as being someone very experienced in customs work and tariff proceedings.

Mr. Elkins: That is true, your Honor.

Q. Attorney Brumbaugh, is he associated with Singer as a resident counsel?

A. No. Mr. Brumbaugh is a member of the firm of Brumbaugh, Free, Graves & Donohue here in New York City.

Q. An outstanding firm. We know it well.

The Court: He thanks you for the tribute, in which I join.

Q. Wasn't there any discussion between representatives of Singer relative to so proceeding before Singer went down to see Mr. Brumbaugh?

A. As I recall, sir, the first conversation that occurred was in Mr. Brumbaugh's office, and even the question of the possibility of bringing such an action came up at that time, [fol. 1246] as I recall.

The Court: You were discussing about the effectiveness of stopping infringing importations?

The Witness: In the United States, yes.

The Court: And about the difficulty of locating the source of supply of the various retailers?

The Witness: And the many suits that would have to be brought and the fact that it looked as if there was no satisfactory remedy just bringing suits.

The Court: And as a result of this conference you all came to the conclusion that the best place was to strike at the source, was it?

The Witness: To see if something couldn't be done in the Tariff Commission.

[fol. 1247] Q. Isn't it true, Mr. Stanford, that prior to Singer's representative, being Mr. Brumbaugh, as you described it, that Singer did have in mind the feasibility of proceeding before the Tariff Commission in one fashion or another?

A. Mr. Elkins, I don't recall that there was any discussion or anything in mind with reference to bringing an action on Gegauf No. 1 prior to the time of this discussion with Mr. Brumbaugh.

Q. Didn't you, Mr. Stanford, seek experts and confer with experts as to testimony that they might offer in behalf of Singer before the United States Tariff Commission?

A. I did not, no, sir.

Q. Do you know of any associates in the Patent Department that did confer with these experts, as we have described them?

A. The only expert that I recall that we conferred with—and it was not in reference to the Tariff Commission action; it was in reference to the civil action that we filed here in the United States, and there was an expert employed to go over that and give testimony in that case.

Now when that began I do not know. I am not prepared to [fol. 1248] say when that expert was consulted.

Q. Will you give us the name of the expert, please?

A. I couldn't do so at the moment, sir. I don't remember his name.

Q. Was there only one?

A. I think there was one——

The Court: What does this have to do with the case? I can't understand its relevance. If you have some good reason for it, and I rely upon your judgment, I will permit you to pursue this line of interrogation. But anybody, in a large corporation particularly, if it is going to institute a proceeding such as this, is going to go around and canvas its possibilities before they begin it.

Now what significance does it have?

Mr. Elkins: The only question here, your Honor, is when.

The Court: All right, ask him: When did you first consult counsel about the possibility or advisability of instituting these Tariff Commission proceedings? Let us come right down to it—if you know.

The Witness: When I first consulted counsel?

[fol. 1249] The Court: Yes. When did your company, to your knowledge, first consult anybody in a professional capacity about the advisability or the availability of these Tariff Commission proceedings?

The Witness: Why, the first that I can recall was in the latter part of May, 1958.

The Court: And who did you talk to about that?

The Witness: Mr. Brumbaugh.

The Court: Did he bring the matter up or did somebody from Singer bring it up, if you know?

The Witness: That would be difficult for me to say when a general discussion of the inadequacies of enforcing a patent came up—or whether Mr. Brumbaugh bought it up I do not know, I cannot say.

The Court: To your knowledge had Singer ever been involved in any proceedings like this before?

The Witness: In Tariff Commission proceedings Singer had not been involved, in a Tariff Commission proceeding.

The Court: All right.

Mr. Elkins: If your Honor please, during pre-trial we asked for such documents as would indicate the date upon which Singer first decided to go ahead and proceed, and there was a discussion there, and the court at the time, speak-

[fol. 1250] ing to defense counsel, said "Go ahead and give them such portion of that document that records that decision"—I believe meaning that even though it might be privileged as to some matter or another, at least there would be enough——

The Court: The point came up as to whether or not you were prying into a disclosure of counsel to his client, of Mr. Brumbaugh to his client that I was anxious to protect.

It was a question of privilege that lawyers fortunately enjoy—or clients enjoy with reference to lawyers.

You were given that date, weren't you? What was the date?

Mr. Elkins: Just by this testimony, your Honor.

Mr. Pettit: Your Honor, this is one of the things that sort of grows. They have every letter that would indicate it. They talked to Brumbaugh. They talked to Colburn. There is nothing that says "Until the action is brought"—"Now bring this action".

It is one of the things that you take up.

The Court: Are there any other letters to your knowledge, Mr. Pettit, in the files of Singer that refer to when this matter was first discussed which the government has not [fol. 1251] already had access to?

Mr. Pettit: The only thing that they do not have is a series of bills from Mr. Brumbaugh which, if he went through them, he would find the first mention of the Tariff Commission was on June 1, 1958.

The Court: That is the first bill from Mr. Brumbaugh by which that is discussed?

Mr. Pettit: That is the first bill.

The Court: That was for the month of May, was it?

Mr. Pettit: That was the June 1st bill for the month of May.

The Court: June 1st bill for the month of May.

Mr. Pettit: Every other letter that we have I think I can safely say they have, it has been turned over to them.

I know of no letter which indicates the time.

The Court: Maybe we can work this thing out if I were to ask Mr. Brumbaugh, through Mr. Pettit, this question: Does this diary show, and do you want to disclose the date when this was first discussed?

Mr. Pettit: Mr. Brumbaugh has his diary right here and would be very glad to answer the question.

[fol. 1252] The Court: We will take Mr. Brumbaugh's statement on this, won't we?

Mr. Elkins: Yes, absolutely, yes.

The Court: That is fine.

Mr. Brumbaugh: I do not have my diary but I made notes, anticipating this. This might be of interest.

The first diary entry I have is May 19, 1958, and my entry is: "Conference with Singer regarding Tariff Commission possibilities in respect of enforcing patent rights".

The next is May 20th, the following day, and my entry is "Conference with Joe Colburn regarding the matter".

Mr. Colburn is the customs counsel whose name has been mentioned.

My next entry is May 23rd—in other words, three days later.

The Court: Is this all 1958?

Mr. Brumbaugh: All 1958.

In other words, in one week's time all of this happened.

On May 23rd I had a further conference with Mr. Colburn regarding the same proceeding, or the possibility.

[fol. 1253] On the 26th of May, my diary entry was—is that I had a conference with Mr. Kircher and others of the Singer Company in the office of Mr. Kircher.

On the 27th of May my diary entry is studying—a study with respect to evidence to be produced or approved in the Tariff Commission proceeding.

The Court: I think that is enough.

We do not want to pry into your diary any further.

Mr. Elkins: If your Honor please, the point of our inquiry relative to documents is that the first document that we have from Singer that relates to the Tariff Commission proceeding is dated some time in July, 1958.

The Court: It takes time for lawyers to get working.

You know how long it takes the Antitrust Division to get on the job. It takes a little time to prepare papers, to look up the law, to check that up—that is quite likely.

Mr. Elkins: And the document in question does not, from its contents, appear to be—and indeed is not—a document that is an introductory document, that is, a document that [fol. 1254] reports that "We are proceeding". It reports that for some time——

The Court: I suggest you proceed with your interrogation, now that Mr. Brumbaugh has very kindly stated these facts.

Maybe we can have it stipulated that Mr. Brumbaugh's statement as a member of the bar, now given, may be considered evidence in this case, without the necessity of swearing him as a witness.

Do you so stipulate, Mr. Pettit?

Mr. Pettit: I will indeed.

The Court: And, Mr. Elkins, will you so stipulate?

Mr. Elkins: I will stipulate that if Attorney Brumbaugh were called, he would testify as he has spoken for the record, yes, sir.

By Mr. Elkins:

Q. Mr. Stanford, I direct your attention to Government's Exhibit No. 62 (handing witness), which, as you have testified, is a memorandum written by you concerning your negotiations with Mr. Gegauf in December, 1957. As stated earlier, there was discussed there the idea of Gegauf wanting to give some privilege under the patent to Vigorelli and to [fol. 1255] Pfaff. And that, as you agree, I believe, appeared in the final agreement of December 5, 1957, as written there?

A. Yes.

Q. Then you go on to say "In this way we avoided giving a license to a third party under the United States patents which we expect to obtain".

Am I right in understanding your testimony that you were there referring to Necchi?

A. He originally started out asking licenses for three people, and one of them was Necchi, and this refers to the "Necchi", the third party.

The Court: The "third party" is Necchi, was it?

The Witness: Or any "third party". I don't know why I did not use "Necchi" here.

Q. Would you be surprised, Mr. Stanford, to learn that of all of the documents here there are none that show Mr. Gegauf was interested or said anything about granting a license to Necchi?

Mr. Pettit: I object to that.

The Court: Objection sustained as to the form of the question.

Mr. Pettit: I do not know whether that is correct.

[fol. 1256] Q. Do you know of any documents that set forth that Mr. Gegauf was interested in reserving some rights for the benefit of Necchi?

A. There was—I am speaking now purely from——

The Court: That is a report of the Italian lawyer, isn't it?

The Witness: A letter from Mr. Kirker, I think, setting forth the demands that Mr. Gegauf is now making, if I am not mistaken. It includes the word.

The Court: Kirker is your Swiss attorney?

The Witness: Yes.

The Court: It is my recollection of that exhibit—let us locate that exhibit by number now.

Mr. Pettit: Government's Exhibit 52.

The Court: Government's Exhibit 52. Let us straighten this thing out right now. I do not like to leave things hanging in the air.

I have a distinct recollection of Necchi's name being mentioned in that Kirker letter.

Mr. Pettit. And Government's Exhibit 50.

The Court: Wait a minute—let's see.

(After examining) In Exhibit 52 I do not see Necchi's name.

Mr. Elkins: It is on page 2.

[fol. 1257] Mr. Pettit: Page 2, your Honor, the first full paragraph.

The Court: (After examining) Yes, I see it "Vigorelli, Necchi, Pfaff"—that is the one that I had in mind.

And you say it is also in 50?

Mr. Pettit: Yes, sir.

The Court: I will see.

(After examining) Yes, it is in the telegram. It says "Pfaff Vigorelli Necchi".

By Mr. Elkins:

Q. I believe, Mr. Stanford, that you stated this morning in relation to testimony concerning Government's Exhibit 50, to which we have just referred, that this was written by Mr. Waterman as a result of a telephone call he had received from Mr. Kirker.

A. That is my understanding, sir.

Q. So that what he is reporting in this Government's Exhibit 50 could be the same material as being reported by Mr. Kirker directly to you in Government's Exhibit No. 52?

Mr. Pettit: Well, I will object to that, your Honor.

The Court: It could be a lot of things.

[fol. 1258] Do you know whether it is the same?

Apparently you can fix it by the date.

The letter is dated the 25th of October.

The telegram is the 24th, and the natural inference is that as soon as Waterman finished talking to Kirker he sent off the cable. The next morning, when Kirker got back to his office in Geneva—where I think he had his office—he dictated the letter.

That is a natural inference, and I think it is a fair inference.

Q. Do you recall Mr. Gegauf saying that he wanted——

The Court: May I point out one thing more to you?

Mr. Elkins: Yes, your Honor.

The Court: Apparently Waterman had met Kirker at Frankfort-on-the-Mainz. He either met him there or had gone right from Geneva up to Frankfort, because you see Kirker's cablegram is from Frankfort and Stanford's reply, the same day, is addressed to Waterman at Frankfort. Apparently Kirker had gone up to Frankfort.

Mr. Elkins: It was a telephone call.

The Court: A telephone call. All right.

[fol. 1259] By Mr. Elkins:

Q. Inasmuch as Government's Exhibit 52, the letter written by Kirker, states, "Since in the meantime we had reported the situation by telephone to Mr. Waterman in Frankfurt," do you recall Mr. Gegauf saying that he was interested in reserving any interest under the Gegauf patents for the benefit of Necchi?

A. When I talked with him?

Q. Yes.

A. No, I don't recall that. Do you mean prior to this time?

Q. At any time, Mr. Stanford, do you recall Mr. Gegauf indicating or saying, expressly saying, that he wanted to reserve some interest in this patent for the benefit of Necchi?

A. I don't recall his actually saying that to me in person.

Q. Now referring to Government's Exhibit 62, which is the memorandum written by you, Mr. Stanford, this states:

"Throughout the entire negotiations I had tried to drive home the point that the Brother Pacesetter ma-

chine was a free-arm zigzag machine and that Singer did not have a comparable free-arm machine to sell. [fol. 1260] Consequently, the Brother Japanese machine was in direct competition with Bernina and not with Singer."

And now you go on here to say, the part to which I now direct your attention, sir:

"During the negotiations I continued to point out various ways that the competition in free-arm machines might be reduced as well as the competition in flat-bed machines and as a consequence Gegauf would be in a position to profit from this fact more than Singer."

And my question, Mr. Stanford, is: Will you tell us now what you enumerated for Mr. Gegauf as the various ways that the competition in free-arm machines might be reduced.

If you don't remember, you may say so, sir.

The Court: The suggestion is most helpful, but I think it ought to be omitted.

Q. Could you enumerate the various ways, if you recall them?

A. Various ways, to my knowledge, could only mean suits under the Gegauf patent. Had we owned it in the United States, we could enforce it. Of course, this was purely a [fols. 1261-1262] bargaining proposition. I was trying awfully hard to acquire a patent which we wanted to use here in the United States.

Q. Nonetheless, it is clear, is it not, that you pointed out to him various ways that the competition in the free-arm machine might be reduced?

A. That is what the memorandum says, yes.

Q. This is a memorandum, Mr. Stanford, that was written by you for the benefit of Mr. Kircher, the vice president of Singer, for Mr. Aurell, for Mr. Bruder, for Mr. Robbins, for Mr. Stewart, and for Mr. Waterman, all, I believe, of Singer; is that not so?

A. That's right.

* * * * * * *

[fol. 1263] Redirect Examination.

By Mr. Pettit:

Q. Mr. Stanford, what is the basic feature of the multiple-cam mechanism in the Singer 401 machine?

A. The basic feature is the plurality of rotary cams, stack of rotary cams carried on a common axis with a single cam follower which moves parallel to the axis of the shaft so that you can select any one of the cams for the purpose of controlling the needle bar.

Q. And is that a retractable cam follower?

A. Yes, that is a retractable cam follower. It can be moved back from the cams and then over to another cam.

Q. Each one of the elements you described there, is that set forth in Claim 1 of the Gegauf patent?

A. The retractable feature?

Q. Each of the features.

A. Each of them, yes.

Q. Why do you consider that the basic feature of the 401 mechanism?

A. That is the very heart of the mechanism. That is an essential part of it. It is absolutely necessary that that be in the machine. You must be able to select the cams to give [fol. 1264] you the patterns. And, if you have two followers, why, the second follower is not necessary; you can still use just one follower.

Q. The machine can operate and does operate on a stack of cams and a single follower?

A. Yes.

Q. And the second follower can be immobilized.

A. That's correct, sir.

Q. Is this feature we have been talking about, which we have just defined, covered by the Johnson patent?

A. Selecting a single cam is not.

Q. Could you use the Johnson patent to prohibit anyone from using such feature in a sewing machine?

A. No.

Q. Could you use the Gegauf patent to prohibit anyone from using such feature in a sewing machine?

A. Gegauf No. 1?

Q. Could you use Gegauf No. 2?

A. No.

Q. Could you use the Harris patent to prohibit anyone from using such feature in a sewing machine?

A. No.

Q. Is there a patent that can exclude the use of such feature?

[fol. 1265] A. Gegauf No. 1.

Q. Is there any other patent that can exclude the use of such feature?

A. No. That is the patent that covers the selection of a single cam.

Q. Mr. Stanford, what is the basic feature of a multiple-cam mechanism in the Singer 319 machine?

A. Well, that has a plurality or stack of cams which are mounted on a common shaft, and there is a follower for each cam on the stack.

Q. Why do you consider that the basic feature of that mechanism?

A. Well, that is an essential that you must be able to select a cam from a stack.

Q. It can operate on one without using the second?

A. Yes, it can.

Q. The machine can operate using one follower without using any other?

A. Yes, just a single follower. Then you have one follower for each cam.

Q. Is this feature covered by the Perla patent?

A. No.

Q. Could you, by the use of the Perla patent, prohibit anyone from using such feature in a sewing machine?

[fol. 1266] A. No.

Q. Is there a patent that could exclude the use of such feature?

A. Will you repeat that, sir.

Q. Is there a patent that could exclude the use of such feature?

A. Yes.

Q. What patent is that?

A. That would be the Gegauf No. 2.

Q. And is there any other patent that could exclude the use of such feature?

A. Not as stated.

Q. Does the 319 have certain ancillary features?

A. Yes, it does.

Q. Would you name them, please.

A. That is the ability to select two cams simultaneously or more than two cams simultaneously.

Q. That is one of them. What about individual handles for shifting the follower?

A. That is another feature, that you have an individual means for activating each cam follower.

Q. Are either or both of these ancillary features dominated by any patent other than the Perla patent?

[fol. 1267] A. The Johnson patent covers the idea of sensing two cams simultaneously.

Q. And?

A. The Perla patent covers the idea of sensing more or selecting more than two.

Q. And which patent dominates the separate handles for each follower?

A. The Perla patent.

Q. The Perla patent for separate handles for each follower?

A. Yes. That has a special handle for each follower.

Q. Can the Harris patent be used to exclude the machine disclosed in the Gegauf No. 1 patent?

A. I beg your pardon, sir?

Q. I am asking now about the Harris patent and ask whether that can be used to exclude the machine disclosed in the Gegauf No. 1 patent.

A. No. The Harris patent cannot be used for that purpose.

Q. Can it be used to exclude the machine disclosed in the Johnson patent or, in other words, a machine constructed as the Singer 401 machine?

A. No.

[fol. 1268] Q. What machine can the Harris patent exclude?

A. A machine which has all the features covered by the Gegauf No. 1 patent plus the additional subject matter set out in the three claims obtained in the reissue. That is, this would be 5, 6, and 7, as I recall.

Q. Do I understand you to mean by that that this patent calls for all of the elements in Gegauf No. 1 plus the elements set forth in either Claim 5, 6 or 7?

A. Yes, that is true.

Q. And if a machine violating that patent removed the mechanism that is described or covered by Claim 5, 6 or 7, could the Harris be then used to exclude that machine?

A. You mean if they removed those features covered by 5, 6 and 7? If they remove those, why, it would not cover that machine.

Mr. Elkins: May I ask, please, that that question and answer be read.

(Record read.)

Q. Mr. Stanford, do you know the difference between Claim 19 that was in the Harris Reissue application and Claim 22 of that application?

A. I think I recall the difference, yes.

[fol. 1269] Q. What was the difference between Claim 19 and Claim 22?

A. Well, first, it was the retractable—Claim 22 had a retractable follower so that it could be moved from one cam to the other, and that was under the influence of the operator, and then it called for something extending from the outside of the machine so that it could be moved.

Q. So that the fundamental difference is the retracability of the follower and a means of having——

A. And a means for locking it after you have selected your cam. In other words, you pull it back, move it over to a new cam, and it is latched in that particular position.

Q. Was it your opinion that claim 19 was proper and valid as written?

A. We always considered that that was a valid claim.

Q. And do you still consider that that would be a valid claim?

A. We do.

Q. With respect to the Messerschmitt machine and the Perla patent, I would like to know whether, upon the issuance of a patent under Gegauf application No. 2, if that had [fol. 1270] been retained by Mr. Gegauf, could that patent have excluded the Messerschmitt machine in the United States.

A. Yes; the Messerschmitt machine would have been an infringement of that patent.

Q. And a license under the Perla patent, would that have permitted a sale in the face of the Gegauf patent?

A. No, it would have been an infringement of the Gegauf No. 2 patent.

Mr. Pettit: Your Honor, I think that would be all, except I would like to just end by introducing in evidence one document.

Q. Did you write this memorandum, note or letter, Mr. Stanford (handing)?

A. Yes. I see that I misspelled a word.

Mr. Pettit: I offer this document in evidence.

Mr. Elkins: No objection, your Honor.

The Court: Received in evidence.

(Received in evidence as Defendant's Exhibit 138.)

Mr. Pettit: Your Honor, I would like to note for the record that Claims 5, 6 and 7 to which we have just referred are set forth in detail in Paragraphs 28 and 29 of the Statement [fol. 1271] of Facts.

The Court: Yes.

* * * * * * *

[fol. 1272] Afternoon Session

2:30 P.M.

JOEL G. STANFORD resumed.

Recross examination.

By Mr. Elkins:

Q. Mr. Stanford, that claim 19 of the Harris Reissue patent which was suggested for interference was suggested for that purpose, was it not, according to Government's Exhibit 175, page 95?

A. Yes, it was.

Q. It was suggested on January 16, 1956?

A. Yes.

Q. And on February 16, 1956, Gegauf made that claim 19 for Harris Reissue for the purposes of interference?

A. He did.

Q. Now, Mr. Stanford, if I could please direct your attention to Government's Exhibit 173, pages 54-55, on April 27, 1956, the Patent Office rejected that claim 19 in the Harris Reissue because of prior art, did it not?

A. Yes, it rejected it on the Miller patent.

Q. And thereafter, as I understand it, claim 22 of the Harris Reissue became a subject of the interference?

A. That is correct.

[fol. 1273] Mr. Elkins: I have no further questions.

Mr. Pettit: That is all.

The Court: Thank you, Mr. Stanford.

(Witness excused.)

* * * * * * *

OPENING STATEMENT OF ALLEN T. KLOTS

Mr. Klots: If your Honor please, may I just say a word with regard to the evidence which we now propose to produce, and that is this: the purpose of this evidence is to endeavor to put into true perspective and true light the trade and commerce which the defendant Singer is accused here of conspiring to restrain and to monopolize, and to attempt to monopolize.

The government has undertaken to define this trade and commerce as trade and commerce in machines that carry a built-in device, built-in multi-cam device for making zigzag stitches.

We propose to show the Court that such a definition implies a totally artificial market that has no relation to the economic facts and has no relation to the legal requirements of the situation.

In other words, the government has arbitrarily, simply to show for the purpose of this case, put machines with built-in multi-cam devices for making zigzag stitches in an [fol. 1274] airtight compartment, and they say that the market is limited to that airtight compartment.

It assumes, if you will, that there is a group—a select

group, if you will, of housewives who must have a machine with a built-in multi-cam device and who are in the market for no other type of machine with devices that make zigzag stitches in other ways. Indeed, they seem to say that these ladies are in the market only for machines that violate the Gegauf patent.

[fol. 1275] Now, merely to state this position, if the court please, seems to us to indicate its unreality, and the testimony which we will produce will show this even more clearly.

What the housewife wants essentially is a sewing machine that will sew. If she wants to make zigzag stitches, she has innumerable choices of machines that do it, with a variety of devices and a variety of ways of doing it.

We have already shown the court that machines with built-in cam devices are being built which do not infringe the Gegauf patent, over which Singer, therefore, has no control whatsoever, which are being imported from Japan and elsewhere. We have put in evidence already, Mr. Pettit did, Exhibits 112, 113 and 114 which are that type of machine with built-in multi-cam devices for making zigzag stitches. These are available for any housewife. These show not only competition in this very type of device for making zigzag stitches but they show how easy it is to build around the Gegauf patent and, in fact, how narrow the coverage of the patent actually is.

We propose to go much further and show the court the stitches and patterns made by machines with replaceable [fol. 1276] cam devices, with manually-operated devices, and by so-called straight stitch machines equipped with the attachment that enables the straight stitch machine to make it, and we will show you that the Singer company actually sells these devices, these attachment devices, for making zigzag stitches as standard equipment with their straight stitch 404 machine.

We will also show you, if the court please, that at whatever price level the housewife finds it necessary or desirable to shop in, whatever price level she finds herself in, all types of machines are available to her in that particular price level, whether they be machines with the built-in device or with the replaceable cam device or with the manual device or the straight stitch with the zigzag attachment device.

If the court please, sewing machines, like many other

products, carry many different features. They are complicated and ingenious mechanisms, as I am sure you have already been able to observe. They come with many different devices for doing different things or different devices for doing the same thing. They come with devices calculated to attract the customer. The fact that they do differ in all these features is the very essence of competition. That is [fol. 1277] why manufacturers think up devices, so that they may compete more effectively with other manufacturers.

It may be that the difference in feature enables them to perform more easily or efficiently in one respect or another. It may be that one has a different feature which makes it peculiarly susceptible to selling talk, good selling talk, but that doesn't put each product produced by a different manufacturer with his own choice of features in a different market. The Supreme Court, of course, in the Cellophane case has put the quietus on any such contention when it said, and I quote, "But where there are market alternatives that buyers may readily use for their purposes, illegal monopoly does not exist merely because the product said to be monopolized differs from others. If it were not so, only physically identical products would be part of the market."

I believe, if your Honor please, that we will be able to show you that if feature films are in the same television market as live shows, shorts and cartoons, as your Honor and Judge Herlands both thought in the Columbia Pictures Universal case, then a fortiori sewing machines that make zigzag stitches, whatever the device used, are in the same market and it is a highly competitive market at that.

[fol. 1278] Now, sir, I will call my first witness, and the first thing we want to show you is what a zigzag stitch looks like and the different machines that make them.

OBJECTION OF GOVERNMENT AND RULING THEREON

Mr. Weinstein: Your Honor, we would like to interpose a general objection at this point. The defendant acknowledges that the point they have reached in their case is what they call the relevant market case. I think it is clear from the pretrials and what we have said to date that the government does not believe the issue of relevant market as discussed in the Cellophane case is in any way relevant to the issues

of this case. We believe that any evidence which tends to show that one product is a competitive substitute for another only obscures the issue as to whether or not an agreement was entered into in 1956 and carried out to combine patents in the hands of Singer for the purpose of excluding multiple-cam zigzag machines of Japanese origin..

We further believe that in so far as we charge an attempt to monopolize in this case, that if the government is successful in proving the specific intent necessary on the part of Singer to exclude these machines, that any question of relevant market is, again, immaterial to the issues. And [fol. 1279] the very case that Mr. Klots cites, the Cellophane case, specifically noted in a footnote, Footnote 23, that that case was distinguishable from cases involving an attempt to monopolize or a conspiracy to monopolize or a conspiracy to restrain trade in that in those cases relevant market is not an issue in the case.

We want to make it clear——

The Court: To take your last point first, one of your counts is a count of attempt to monopolize. An attempt, according to my understanding of the law, is a series of acts or an act which, if not interrupted, if carried to its consummation, would result in the completed act. In other words, if you charge somebody with attempted robbery, if the acts continued there would have been a robbery.

But here you have a situation which, according to defendant, is one in which nothing that they did or attempted to do could in any way constitute a monopoly, and therefore they cannot be charged with a monopoly.

You have talked a lot in terms which are related to the criminal law in this case, particularly those comments coming from the government. The only exception that I know to this general rule is on the crime of attempted abortion or [fol. 1280] matters of that type.

I am going to take this, and I am going to take it also on the charge that there was a conspiracy to restrain, because until we know what was attempted to be restrained, we cannot find out whether or not there was a restraint and we cannot ascertain whether there was a restraint in fact or in law.

Your exception is noted upon the record, and I am going to take this evidence as to what has been described as rele-

vant market, and you may have a general exception, something which I ordinarily do not grant but which I will grant to you.

Mr. Weinstein: Thank you very much, your Honor.

[fol. 1281] JESSIE HUTTON, called as a witness in behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Klots:

Q. Miss Hutton, will you give your address—did you give your address?

A. No, I did not.

Q. Would you give that, please?

A. I live at 70 Harbor Lane, Massapequa Park, Long Island, New York.

Q. And you hold a position with the Singer Sewing Machine Company?

A. I am educational director.

Q. And how long have you been the educational director?

A. Since April 1, 1956.

Q. How long have you been with the Singer Company?

A. I will finish my 25th year about the middle of June.

Q. And what was your first job with the Singer Sewing Machine Company?

A. I started as a sales woman teacher while still in school.

[fol. 1282] Q. And what school was that?

A. I was attending the University of Dubuque in Dubuque, Iowa.

Q. And did you graduate from the University of Dubuque?

A. The first year with Singer I worked 30 hours a week which enabled me to carry a full—my full senior year course. I graduated in 1937 with a Bachelor of Arts degree.

Q. Now when you say you were a part-time teacher for Singer, what were you teaching and whom were you teaching?

A. I was a sales woman at the time. At that time we gave a seven-lesson course in sewing with the purchase of each sewing machine.

Q. To the customer?

A. To the customer, yes.

Q. And you were teaching the customers or the teachers or both?

A. I was teaching customers when I began.

Q. Yes. Then after working in Dubuque where did you next go?

A. I worked in the Dubuque, Iowa, shop as sales woman [fol. 1283] teacher until 1939.

In September I was transferred to the Duluth, Minnesota, shop, which was an enlarged shop and then it required an enlarged staff. Again I was sales woman teacher.

Q. And from Duluth where did you go and when?

A. The end of 1939 I was transferred to the St. Paul central agency officer as an assistant educational supervisor, which meant that I traveled the mid-west area covering 52 Singer shops.

Q. And then did you shortly become educational supervisor?

A. About a year or a year and two months later I became educational supervisor and remained there until 1945, November.

Q. Yes, and then where did you go?

A. I was transferred to the executive offices in New York as a field staff member of the educational department.

Q. And did that involve traveling about the United States?

A. In that capacity I traveled throughout the United States and Canada carrying the educational program.

Q. And how long did you continue in that capacity?

[fol. 1284] A. Until about 1954, I believe it was.

Q. And then what did you become?

A. I became assistant educational director.

Q. And then in April, 1956?

A. In April, 1956, I became educational director.

Q. Now what are your duties as educational director of the Singer Sewing Machine Company?

A. The educational department covers many facets, and I am responsible for the direction of the program.

We have aproximately—we have exactly 19 people employed in the educational department at this office, at the executive office.

Q. Here in New York?

A. Yes.

Q. Yes?

A. We supervise indirectly a staff of educational supervisors who are employed at our central agency points throughout the United States and Canada. That number varies slightly from time to time, some 75 to 80 girls who in turn are supervising their shop areas.

Q. Yes?

A. There are several facets, important facets to educational work.

Consumer education is one; employee training is [fol. 1285] another; providing sewing information for editors, publicity work, the source of sewing knowledge, sewing books and that kind of thing.

Q. Do you prepare instruction books for sewing?

A. Yes, a facet of our work is the composition of the instruction book. Of course the work related to product development and experimentation and product testing.

Q. You are consulted in the matter of product development, are you, by the other officials of the Singer Company?

A. That is a very important facet of our work because in order to determine what the device will be used for, the extent of customer usage, the extent of need, how the mechanical will be applied as a home sewing item—after all, its a woman's product, and it is women who use sewing machines, therefore it is women who determine how other women will react to them.

Q. And what they want.

A. Yes.

Q. In your present job do you travel about——

A. Yes, I do.

Q. —or are you right here in the City of New York?

[fol. 1286] A. Yes, I travel, at times.

Q. What kind of traveling do you do? Where do you go?

A. Of course not as extensively as when I was on the traveling staff and traveling some 48 weeks out of 52.

My traveling assignments now, I always attend the conventions of the American Home Economics Association,

spending a great deal of time in our own booth and spending a great deal of time mixing among educators.

I travel for educational supervisors' meetings—the most recent was last November, we had a meeting for our Canadian educational supervisors' staff, at which time we reviewed the total picture of educational work in Canada, employee training and consumer reaction and product information—the general type of educational work.

Q. You may have already answered it, but does your job in any way ascertain customer requirements?

A. Oh, yes.

Q. Are you familiar with the Singer machines, the machines that the Singer Company makes which make zigzag stitches as well as straight stitches?

[fol. 1287] A. Yes.

Q. One of these machines is the so-called 401 machine, is it not?

A. Yes.

Mr. Klots: That is in evidence, your Honor, as Exhibit 106, and I think you are already fairly familiar with it so I won't have to show that any more intimately.

Q. Now there is a machine in evidence, Exhibit 116, known as the 403. That is the machine with the replaceable cams, is it not?

A. Yes.

Mr. Klots: I do not think we have offered, however, your Honor—well, I will withdraw that.

Q. Does there come with that machine a box of replaceable cams?

A. Yes.

Q. I would like to show you this; and I will ask you if this box, which I show you, and its contents, come as standard equipment with the 403 machine (handing witness)?

A. Yes.

Mr. Klots: I offer it in evidence.

I do not think it is necessary to offer the instruction book [fol. 1288] which is in the box. Otherwise I offer the box and its contents.

The Court: Why don't you leave the instruction book in, in case I want to look at it?

(Laughter)

Mr. Klots: I will be delighted, your Honor.
The Court: Any objection?
Mr. Weinstein: No objection.

(Marked Defendant's Exhibit 139.)

The Court: Is this box of attachments that has just been marked in evidence standard equipment or extra?
The Witness: It is standard.
The Court: Standard.
The Witness: Yes, 8.
The Court: It goes with the machine?
The Witness: Yes.
The Court: All right.

By Mr. Klots:

Q. Miss Hutton, I noticed these black discs in this exhibit —they are the cams, are they not?
A. Yes.
Q. And there are eight in this box?
A. There are eight.
[fol. 1289] Q. And there is also one that comes attached to the machine?
A. Yes.
Q. That is removable but it is in the machine?
A. Yes.
Q. Now I notice on each of these discs there is a little, sort of a design (indicating).
What is that design on each of these discs?
A. That indicates the stitch pattern that is produced when this cam is inserted in the machine.
Q. So if you want to make that particular stitch pattern you just pick out the cam that has a picture of the design on it?
A. Right.
Q. What are these other gadgets in this box besides these cams?
A. These are what we term the regular attachments and accessories for the machine which—shall I name them?
Q. Yes, just name some of them.
A. Obviously that is the large screwdriver (indicating).
This is a straight stitch throat plate, which has a narrow opening.

[fol. 1290] A lint brush (indicating).

Q. Just a minute. This throat plate, we will hear more about it later—this goes under the needle, does it not?

A. Yes.

Q. And when the needle zigzags, you have to have a little different type than a straight stitch throat plate?

A. Well, this is a straight stitch throat plate which has a small round opening.

The Court: You ought to have a tag put on that and mark it—mark it Exhibit 139-A.

(Marked Defendant's Exhibit 139-A.)

The Court: That is the gadget that goes down.

The Witness: Yes—the feed dog rises up through slots and the needle goes down through the little round slot.

By Mr. Klots:

Q. What other gadgets are there?

Mr. Klots: I do not know that we have to mark the screwdriver.

The Court: No.

A. This is a seam guide.

Mr. Klots: I do not think we have to mark that separately [fol. 1291] either.

The Court: No.

A. (Continuing) A straight stitch presser foot.

The Court: To keep the material down on the machine?

The Witness: Yes.

A (Continuing) A hinged adjustable zipper foot.

Q. Whatever that means—that means when you put on zippers, is it?

A. Yes.

Q. Is that when you are sewing on zippers?

A. They use it for sewing zippers. It is used for making corded welting, corded button holes.

Foot hemmer. It makes a small narrow hem.

This is called a special purpose foot.

Q. What does that do?

A. Well, we have one called a general purpose foot. This

does almost everything else. This is primarily for buttonholing, for applique.

Q. You use that in connection with buttonholing?

A. Yes.

Q. You use a zigzag stitch when you make buttonholes?

[fol. 1292] A. Yes.

Q. I see.

A. This is a button sewing foot.

Q. What is a button sewing foot—for sewing a button on?

A. Yes.

Q. You have to have an attachment for that?

A. Yes.

Q. What is this gadget?

A. This is a ruffler. This is very famaliar to the home sewer.

Q. Very familiar to the home sewer. You mean they like to make ruffles on their dresses?

A. They have seen that type of attachment for many years.

Mr. Klots: Let us mark the ruffler.

(Marked Defendant's Exhibit 139-B.)

A. This is a bias binder.

Mr. Klots: Let us mark that.

(Marked Defendant's Exhibit 139-C.)

By Mr. Klots:

Q. What are these (indicating)?

A. These are bobbins and needles.

[fol. 1293] Mr. Klots: All right, I think that completes the gadgets that are in this box.

I thought we might as well go through them while they are before us.

By Mr. Klots:

Q. Now, Miss Hutton, I show you a cardboard box with a lot of little cardboard boxes in it.

What are in these little cardboard boxes?

A. These are the cams that may be purchased separately for the 403 and 401 machine.

Q. And they may also be used on the 401 machine?
A. Yes.
Q. That is the extra cam on top of the 401 machine?
A. Yes.
Q. In other words, these are additional to the ones in Exhibit 139 which come as standard equipment?
A. Right.

The Court: How many altogether are there of these extra cams and attachments?
The Witness: There are 12 extras.
The Court: 12?
The Witness: Yes.
The Court: All right, and then you——
The Witness: 12 and 9 are 22.
[fol. 1294] Mr. Klots: Well, there is one on the machine.
The Witness: Yes, there is one on the machine. So there are 13 extras.
There are 8 in here, 1 on the machine is 9, and they total 22.

Q. Do each of these have a little picture——
A. Yes.
Q. —of the pattern on the cam?
A. Yes.
Q. And on the box, too?
A. Yes.

Mr. Klots: I would like to offer these in evidence.

(Marked Defendant's Exhibit 140 in evidence.)

Mr. Klots: I would like to offer in evidence, your Honor, another machine that has not actually been offered but is very important in this picture, and that is the Singer 404 machine. It is one of these right here (indicating).

By Mr. Klots:

Q. I show you this machine and ask you what that machine is—what is it known as? I mean, what is the number of the machine (indicating).
[fol. 1295] A. Oh, this is a 404, the first of the slant needle series.

The Court: The first of the what?
The Witness: Slant needle series.

Mr. Klots: Your Honor will notice the needle on this is slanted, and that is true of the exhibits we have already put in—the 401, the 403 and the 404. This needle does not come out straight but it is slanted.

I will ask her more about that.

I offer it in evidence.

Mr. Weinstein: Your Honor, we object. This machine is not even a zigzag machine. It is a straight stitch machine and does not fall within the class of zigzag machines.

The Court: I do not know what it is yet. I have seen so many machines one more won't hurt.

Objection overruled. Let's find out. If it is not material I won't pay any attention to it.

(Marked Defendant's Exhibit 141 in evidence.)

[fol. 1296] By Mr. Klots:

Q. This is known as a straight stitch machine, but what is this red box that I see alongside of it?

A. This is part of something else.

Mr. Klots: I withdraw the red box. It doesn't go with this machine.

Q. I ask you instead what is this box that I find here near this machine?

A. This is the zigzag attachment that is sold as part of the equipment with the 404 machine.

Q. Is that sold as standard equipment?

A. Yes.

Q. And does it make zigzag stitches?

A. Yes, it does.

Mr. Klots: I offer that in evidence.

The Court: We will mark it as A.

(Received in evidence as Defendant's Exhibit 141A.)

The Court: So that you can convert the straight stitch into a zigzag by putting on this attachment?

The Witness: Right.

The Court: Where does this attachment go? As you put this on the machine, tell us what you do with it.

[fol. 1297] The Witness: I am removing the presser foot.

The Court: That is the gadget that presses against the material before it goes through the needle?

The Witness: Right. I merely bring the attachment on from the back (indicating).

The Court: And press the foot forward.

The Witness: And there is a separate thumbscrew here (indicating).

The Court: I see. You screw that on where you took the presser foot off.

The Witness: That's right.

The Court: So that the black part is away from the operator and the presser foot is to the operator.

The Witness: Right. I can't get the hole, but that's where it goes.

The Court: You would get more practice if you were out in the field, I guess.

The Witness: You bet.

Mr. Klots: I am doing it without any difficulty.

By Mr. Klots:

Q. Just for our education, Miss Hutton, tell us what does this zigzag attachment do.

Would you mind if I lead a little bit?

This attachment zigzags the material instead of zigzag-[fol. 1298] ing the needle; is that right?

A. That is the fabric-shifting device.

Mr. Klots: It shifts the fabric.

The Court: The fabric goes back and forth and moves around, and that is done by this foot moving (indicating)?

The Witness: Yes.

The Court: And the needle remains stationary.

(The witness operates the machine.)

The Court: The foot moves.

The Witness: The feed of the machine is moving the material away from the operator.

Q. Now, Miss Hutton, does that zigzag attachment also contain replaceable cams?

A. Yes. The cam is removed here (indicating). There are four replaceables with the set.

Q. Four cams that come with the set, and each of those has a picture of the zigzag stitch.

The Court: Instead of moving the needle laterally, the material is moved laterally.

The Witness: The fabric is shifted.
The Court: As well as pulled through.
The Witness: Yes, two motions.
The Court: But one motion is on the machine-carried cam. [fol. 1299] It would be applied to the needle. By this gadget it is applied to the material, the lateral movement.
The Witness: Correct.
The Court: All right.

Q. Besides these four cams that are part of this box that carries Defendant's Exhibit A141, the zigzag attachment, are there other cams that Singer has available to make different types of zigzag stitches?
A. There are 12 additional.
Q. Twelve additional.
And I show you the three boxes, each of which appears to have four cams in it, and ask you if these are the additional cams.
A. Yes.

Mr. Klots: I offer these in evidence.
Mr. Weinstein: No objection.
Mr. Klots: As one exhibit.
The Court: Mark that with a B.

(Received in evidence as Defendant's Exhibit 141B.)

Q. Each of these, the 403, the 401, and the 404 are sold with a certain number of cams.
Can you tell us whether or not it is possible to make al- [fol. 1300] most an unlimited number of cams to make different patterns?

Mr. Weinstein: Objection, your Honor. I don't know that this witness is qualified to testify to what I believe it an engineering matter, if I understand the question correctly.
The Court: Yes. Objection sustained.
Mr. Klots: All right. We will have another witness for that.

Q. Singer also makes a machine known as the 206 machine, does it not, which I believe is in evidence as Defendant's Exhibit 105?

The Court: I would like to go back for just a moment. I have something in my mind and I would like to get it off.

On this last machine we had here, the straight stitch machine, can you use this on any material irrespective of its thickness or must it be used exclusively on a fine or thin material?

The Witness: Well, your Honor, all family machines have some limit as to capacity.

The Court: No, no. This machine that we are talking about. This machine that we have just marked in evidence as Defendant's Exhibit 141, is the capacity of that [fol. 1301] machine limited to materials of thin quality?

The Witness: Not necessarily.

The Court: In thickness. Can you use it, for instance, on woolen material as heavy as you could use on the 401 machine?

The Witness: In my opinion, yes.

Q. I mentioned Defendant's Exhibit 105, which is the 206 machine. That machine I think Mr. Pettit has already described as a manually-operated device for making zigzag patterns, is that right?

A. Yes.

Q. Does that have a built-in cam also that makes the standard zigzag?

A. Yes, yes.

Q. So that without touching those levers, it will make a zigzag stitch of a certain definite pattern, is that right?

The Court: You will have to put one of the cams in gear, won't you?

The Witness: You must engage the lever. I mean, at a zero point it is straight stitch. When the lever is moved off zero toward 5 it makes a zigzag stitch. Five is the greatest width, and each degree under 5 is a lesser width of zigzag.

[fol. 1302] Q. So that without touching the lever at all after you have once set it, it will make a zigzag stitch?

A. That's right.

Q. But if you want to vary the zigzag stitch as it goes along, you have to work the levers?

A. Yes.

Q. And that is why it is called a manual machine?

A. Right.

The Court: Suppose we take a five-minute recess.

(A short recess.)

By Mr. Klots:

Q. Miss Hutton, have you operated any of these various types of machines yourself?

A. Yes, I have operated all of them.

Q. Is there a type of zigzag stitch sometimes described as a functional zigzag stitch and another type described as an ornamental or decorative type?

A. Yes. Many zigzag stitches are used functionally and therefore can be described as a functional stitch.

Q. Yes?

A. The basic zigzag stitch is a functional stitch.

Q. And then there are other types that are used purely [fol. 1303] for ornamentation?

A. That's right.

Q. Can one make a straight stitch and a functional zigzag stitch and an ornamental zigzag stitch on all of these different machines that you have mentioned this afternoon? That is to say, the 401, the 403, the 404 and the 206, which is the manual machine?

A. Yes.

Q. Have you at my request caused to be made a dress on which all of these different stitches have been made by each of four different machines employing different zigzag devices?

A. Yes.

Q. I show you this garment and ask you if this is the dress in question.

A. Yes, it is.

Q. Was that dress made under your supervision?

A. Yes.

Q. Did you actually observe the stitching as it was being made on it?

A. Yes.

Q. And the machines that were making them?

A. Yes.

Mr. Klots: I offer it in evidence.

[fol. 1304] Mr. Weinstein: No objection.

The Court: Received in evidence.

(Received in evidence as Defendant's Exhibit 142.)

The Court: Let me see the material.

A cotton twill. It is a good $27 retailer, marked down, though.

Q. Miss Hutton, will you first point out to the court what machines made the straight stitching on this dress and what machines made the zigzag stitches.

A. Obviously all the construction seams are made with straight stitching. Since the straight stitching appears the same to the eye, we labeled them so there would be no confusion.

The Court: All seams are straight stitched. What about the hem there?

The Witness: Yes. The hem is finished with the zigzag stitching. However, the hem is hand-stitched in place because this is a high-priced dress.

Q. But the zigzag stitching used on the hem is what you would call functional?

A. Yes, sir, that is used functionally.

Q. And have you labeled with the numbers 401 and 404 and manual exactly——

[fol. 1305] A. Yes.

The Court: I have looked at that.

A. (continuing) The 404, which is the straight stitch machine and the zigzag attachment, was used to finish this with zigzag stitching. The 403 was used on this side.

The Court: You have put these little white labels on to indicate the type of stitching.

The Witness: The machine with which it was stitched, yes.

Q. Now Miss Hutton, I see on the front of this garment, this expensive garment, what looks like decorative patches.

The Court: Applique.

Q. On each pocket.

A. Yes. These are applied pocket flaps, purely for decoration.

Q. And these little—what look like patches——

A. These are applique. The patches are applique for color mass and for design interest.

Q. The Judge was right when he said they were applique.
A. Yes.

Q. These appliques, there is a yellow patch and a white [fol. 1306] patch and a green patch on each pocket. Was a zigzag stitch used in any way?

A. That is a basic zigzag stitch set for a narrow bight, and the stitch length was made close together to make it a very secure applique.

Q. And the decorative border on each of these pockets was also made with zigzag stitching?

A. Yes. That is a purely decorative zigzag stitch. The narrow yellow and white line, of course, is the same stitch that was used to applique except used in a different way.

Q. Tell us which machines made each of those respective pockets.

A. Well, it is very hard to distinguish between them also, so we have labeled them. The 403 machine, which is a replaceable cam machine, was used for this one (indicating).

Q. That is the one over the left breast.
A. Yes.

The Court: On the jacket.
The Witness: On the jacket, yes.

A. (continuing) The 401 machine, the built-in cams machine, was used for this one (indicating).

Q. That is over the right breast.

[fol. 1307] A. Yes. The right hip pocket was made on the manual zigzag machine. The left hip pocket was made on the zigzag attachment on the 404 machine.

Q. Were any of these buttonholes made on these machines?

A. The buttonholes were made on the 401 machine, and these are a corded buttonhole. They employ the use of that hinged, adjustable zipper foot which is also used for cording and straight stitching. They could have been made on any of the machines.

Q. They could have been made on any of the machines.
A. Yes.

The Court: That is about a size 12, is it, or size 14?
The Witness: Twelve.

Q. Have you also at my request made under your supervision samples of stitches, zigzag stitches, that may be made on the different types of machines that we have been talking about?

A. Yes.

Q. I show you, for instance, one sample here which is labeled 401. What machine was that made on?

A. That is the machine with the built-in cams.

Q. The 401 machine?

[fol. 1308] A. The 401.

Mr. Klots: I would like to offer that in evidence.

The Court: Why not put that with the 401 machine as another letter so we will have with each machine the attachment and the sample of its productive work. That would be the better way, and thus we won't have any trouble with it.

Mr. Weinstein: May we inquire, your Honor, whether these stitches were made under the supervision or by Miss Hutton?

The Witness: They were not made by me. They were made in the Educational Department under my observation and supervision.

Mr. Weinstein: Did you actually observe these?

The Witness: Yes, of course.

Mr. Weinstein: No objection.

(Received in evidence as Defendant's Exhibit 106C.)

Q. Those are samples of the patterns that can be made on the 401 machine?

A. Right.

Mr. Klots: By the way, your Honor. I don't know if you ever heard this word. I didn't until yesterday. They call [fol. 1309] these swatches. Did you ever hear that expression?

The Court: Yes, sir, I did.

Mr. Klots: Then you won't be baffled if we call them swatches from now on.

Q. I show you this swatch which is numbered 403 and ask you what machine made those patterns.

A. The replaceable cam machine, or the 403.

Mr. Klots: I offer that in evidence.

Mr. Weinstein: No objection, your Honor.

(Received in evidence as Defendant's Exhibit 116C.)

Q. Now I show you another swatch which has the number 404 on it. It says "404 with zigzag attachment." What machine made those zigzag patterns?

A. The 404 machine, which is a straight stitch machine equipped with the automatic zigzag attachment.

Mr. Klots: I offer that in evidence.

Mr. Weinstein: No objection.

(Received in evidence as Defendant's Exhibit 141C.)

The Court: I see that this zigzag machine, the 404, doesn't produce this close stitching that you have on the 401 or the 403. Could you produce similar stitching, for instance, as [fol. 1310] shown on the first or the second line and the fifth line on the 404 as was produced on the 401 and 403?

The Witness: Your Honor, the difference lies in——

The Court: No. Please answer my question.

The Witness: I am sorry.

Mr. Klots: She may not be able to answer yes or no.

The Court: I think she should answer yes or no.

Can you produce with the 404 this type of zigzag shown on the second line of the 401 and 403, the close proximity of the stitching?

Do you know what I mean?

The Witness: We cannot produce as dense a stitch, your Honor, with the same dimension.

The Court: That's right.

[fol. 1311] Q. I show you another swatch which has the description on it "Pfaff 259" and I ask you on what type of machine those stitches were made.

A. On the Pfaff 259 manual machine.

Q. It is a manually-operated machine?

A. Yes.

Mr. Klots: I offer it in evidence.

Mr. Weinstein: No objection.

(Received in evidence as Defendant's Exhibit 143.)

Q. Miss Hutton, I have some more swatches here, and I ask if these were all made by your staff?

A. Yes.

Q. I show you the first one. This has—and they have little tags with them which indicate the machines on which they were made?

A. Yes.

Q. I show you this one which bears the tag—it says "Consolidated Sewmor Model 770 (old design) Serial Y277-2436."

Mr. Klots: And may I for the record state, your Honor, that that is the Japanese-manufactured machine which is in evidence as Exhibit 111.

I offer it in evidence.

[fol. 1312] I think your Honor wanted these indicated in evidence.

The Court: I would like to have them marked related to each machine.

Mark this Exhibit 111B.

Mr. Weinstein: No objection, your Honor.

(Received in evidence as Defendant's Exhibit 111B.)

Mr. Klots: I offer in evidence one of these swatches that has a tag attached to it entitled "Consolidated Sewmor, Model 770 (model year 1960) Serial No. Y27-5527"—and I will state for the record, your Honor, that that is the machine that is in evidence, a Japanese machine, Exhibit 112, which is a non-infringing machine. It is the barrel-stave type of machine—do you remember that, sir? The barrel-stave type of built-in mechanism.

The Court: I recall that.

Mr. Weinstein: No objection.

(Received in evidence as Defendant's Exhibit 112B.)

Mr. Klots: I may say, if I am not disputed, that by examining the machine you will see that the machine is exactly the same as Exhibit 111 except for the built-in mechanism, [fol. 1313] which is the barrel-stave mechanism instead of a stack of cams.

Finally I offer in evidence a swatch which bears the tag

"Universal TViewer, Deluxe Auto Zigzag, Serial No. 2973062"—which is the machine that is in evidence as Exhibit 113 and is a non-infringing machine.

Mr. Weinstein: No objection, your Honor.

(Received in evidence as Defendant's Exhibit 113B.)

Mr. Klots: I think your Honor might notice the difference between the stitches on the infringing machine and the stitches on the non-infringing machines. They are the same patterns but notice the quality.

Mr. Weinstein: Your Honor, I do not think that kind of comment should be brought out before the witness. I think if they are the same, the witness should be asked to testify as to that, or else—it certainly should not be coming from Mr. Klots.

The Court: Well, we can observe them whether he makes the comments or not.

Mr. Klots: I certainly did not mean to argue.

The Court: Can you tell me whether the density of this line of stitching we find here—that there is a density of stitching on any particular line—is the result of the speed [fols. 1314-1315] with which the machine can be operated, or whether it is the result of the conformation of the perimeter or outside of the cam—if you know?

The Witness: The density does not relate to the cam. It relates to the stitch length mechanism—the stitch length control and the linkage to the feed dog.

The Court: All right.

* * * * * * *

[fol. 1316] New York, June 1, 1961, 10.30 o'clock a.m.

Mr. Klots: Miss Hutton, will you resume the stand.

Jessie Hutton resumed.

Direct examination Continued.

By Mr. Klots:

Q. Miss Hutton, on page 1295 of the record you stated that the 404 machine—the 404 Singer machine is the "first of the slant needle series."

Those were your words. What did you mean by the "first of the slant needle series"?

A. We consider the slant needle series to be the 404, the 403 and the 401. The 404 is first in the sense that it is lowest in price and simplest in features.

Q. Lowest in price?

A. We are working from the bottom up.

Q. You did not mean that it came out before the 401?

A. No, it did not.

[fol. 1317] Q. As a matter of fact it came out about two years later, didn't it?

A. Yes, I believe so.

Q. Now I remind you of these exhibits, which are the swatches which were made on the 401, 403 and 404, and the Pfaff 259. I ask you are these stitches which appear on these swatches the only stitches that can be made on those different machines.

A. No, they are not. There are many more.

Q. And what does it depend on?

A. It depends on how many cams are supplied with the machine, how many are designed for it. There are many more supplied with these machines.

Q. Or how many could be supplied?

A. Yes.

Q. Now this sounds like a simple question, but tell us, Miss Hutton, what does the housewife use a sewing machine for?

A. In its broadest sense, to sew.

Q. Right. And what does sewing ordinarily consist of in the American home?

A. Sewing consists of fabricating clothing for the family, fabric furnishings for the home.

Q. Yes. And what stitches are used for these different [fol. 1318] purposes?

A. The stitch primarily used is the straight stitch.

Q. And what operations is the straight stitch ordinarly used in?

A. Of course seaming, joining two pieces of fabric together, is the basic of all sewing.

Q. Yes. And what are the most usual sewing operations in the home?

A. Almost anything one makes requires seaming sections together. It requires some kind of closure. It requires some kind of hem or edge finish.

Q. What kind of sewing does the housewife mostly do—I mean, making clothes or making draperies or making what?

A. Home sewing in America consists primarily in making women's and children's dresses and leisure clothes, garments to wear. In a lesser degree it consists of making draperies, curtains, slipcovers; to some extent linens, tablecloths, place mats and things of that kind.

[fol. 1319] Q. Insofar as the clothing is concerned, what is the stitch ordinarily used?

A. Straight stitch.

Q. Are zigzag stitches sometimes used in the making of clothing?

A. Zigzag stitches are used in finishing these garments. The finishing steps are primarily finishing the edges of seams so they do not ravel. A finishing step is the hem, either preparing the hem for handling or blind stitching the hem in its complete form. Making button holes, sewing on buttons, aspects of construction.

Q. How would you describe the types of zigzag stitch that is used for those purposes?

A. Those zigzag stitches are described as being functional.

Q. Is there a further subheading under functional zigzag stitches?

A. There are different types of functional stitches. The basic zigzag stitch probably is used most extensively because it may be used for seam finishing. It is definitely used for button holes, for sewing on buttons. It is a good stitch in mending operations. It is a good stitch in seaming some of [fol. 1320] the specialty seams, hairline seam or a seam in very heavy yard furniture, canvas, and the like, where you want a very durable seam, with two rows of stitching.

Q. Is there another kind?

A. The blind stitch of course is a good stitch for over edging, where it is used as a seam finish. It is an excellent stitch for blind stitching a zipper insertion, for hemming in draperies or house clothes, children's dresses, where it duplicates hand stitching and yet is done at a great deal more speed.

The Court: Does Singer publish a manual for each of these various types of machines which discloses the various types of stitch which can be used by each particular machine and the purposes for which those stitches may be employed?

The Witness: That is the instruction book.

The Court: It might be advisable to have some of those instruction books offered in evidence.

Mr. Klots: Yes.

The Witness: The instruction books are with the attachment sets and when we discuss the 403 it is in evidence.

Mr. Klots: One of them is already in evidence. It is in the [fol. 1321] little box that has the extra cams.

The Court: I know it is.

Mr. Klots: We will see that those are put in evidence.

Q. Is there a third functional type of zigzag stitch?

A. Yes. We call it the multiple stitch zigzag. It is an excellent stitch for finishing seam edges on tweed-like fabrics. It is very good for seaming interfacings, when one wants a very flat butted seam. It is an excellent ending stitch for repairing linens. It is used always when applying elastic or sewing elastic fabrics together.

Q. I show you these swatches in evidence, showing stitchings which were made with the 404, 403, 401 and the Pfaff 259 machines. They are Exhibits 143, which is the Pfaff, 141C, 116C and 106C. I will ask you if you will point out to the Court the three types of zigzag stitches that you just mentioned, basic stitch, the blind stitch and the multiple stitch?

A. This is the basic zigzag stitch. It is the heavy line. As it is seen here, it is used as a satin stitch. This stitch, opened [fol. 1322] up, made narrower or to a specific width for the operation, is the functional zigzag stitch.

Mr. Klots: The witness is referring to Exhibit 106C and to the stitch at the bottom of that exhibit.

Q. That is the basic zigzag stitch?

A. Yes. The stitch immediately next to it is the blind stitch. This blind stitch is the one for over edging.

The Court: Might it not be better if we just marked these physically on the exhibit? This top one is the basic zigzag stitch?

The Witness: Yes.

The Court: Basic zigzag stitch. The second one is called what?

The Witness: The blind stitch.

The Court: I will mark that on the exhibit physically, on Exhibit 106C, the blind zigzag stitch.

The Witness: We normally call it the blind stitch.

The Court: That has to be done on a zigzag machine, with a cam?

The Witness: Yes.

The Court: We will call it the blind zigzag, that would be [fol. 1323] a correct technical description?

The Witness: Yes.

Q. His Honor said it had to be on a zigzag machine with a cam. Is it necessary to have a cam?

A. It can be done on a manual zigzag machine and on the 404 machine with the zigzag attachment.

Q. You mentioned a third type of functional zigzag stitch. That was the multiple stitch, was it?

A. Yes. The first line on the sample——

The Court: That is called what?

The Witness: Multiple stitch zigzag.

The Court: Then we will mark that multiple stitch zigzag, is that right?

The Witness: That is right.

Q. That is the top line in this particular exhibit, is it not?

A. Yes.

The Court: We will mark that with an arrow, multiple stitch zigzag.

Q. Each of these exhibits that I have just enumerated, these swatches, carry those three stitches, do they not?

A. Yes.

Q. These functional zigzag stitches, are they seen usually [fol. 1324] by the outside viewer of the lady's garment?

A. No, they are not.

Q. Do most American women design their own clothes?

A. Very few American women design their own clothes in proportion to the number sewing.

Q. How do they go about making their clothes, what do they use to help them?

A. There are five major pattern companies that supply a tissue pattern, printed tissue pattern. There are a number of other companies of lesser importance who also supply a paper pattern.

Q. Are you familiar with the patterns that these different companies issue?

A. Yes.

Q. Is that part of your job?

A. Yes, it is part of our job, it is part of our dressmaking course, it is part of supervision. We do a great deal of our own sewing, each of us in the department.

Q. What kind of stitches do these patterns require?

A. The patterns require the straight stitch.

[fol. 1325] Q. I do not know whether you have already mentioned this, but is the sewing machine also used to mend or repair clothing?

A. Yes, mending, repairing and maintenance of clothing and household items is an important function of the home sewing machine.

Q. What kind of stitches are used in repairing?

A. The straight stitch is used probably the most extensively in mending and repairing. The multiple stitch zigzag is a useful stitch as well, and the basic zigzag, too.

Q. Tell us what are the various kinds of ornamentation which a home sewer usually places upon her clothes.

A. There are many established types of ornamentation. The use of buttons, the use of buttonholes, the use of pockets, pleating, tucks, darts.

Q. How about lace?

A. Lace, lace insertion and lace edging are important. Braid is important. Bands of trimming are important; decorative stitching.

Q. I beg pardon?

A. Decorative zigzag stitching is also part of the decorative picture.

[fol. 1326] Q. What about applique?

A. Applique is used.

Q. Have you mentioned pleats and tucks?

A. Pleats and tucks, yes. They fall into the construction trims.

Q. Yes. What else along that line in the nature of pleats and tucks?

A. Pleats, tucks, pockets, shirring, cording.

Q. Ruffles, I suppose.

A. Yes, ruffles.

Q. Do any of those decorations need a zigzag stitch?

A. Most of those do not.

Q. Now to what extent does the ornamental zigzag stitch play a role in the fabricating of clothes by American housewives?

A. It is a very small percentage. In fact, we base our judgments on 90 per cent of all home sewing is straight stitching.

Q. Yes.

A. The amount remaining, 10 per cent, is zigzagging and of that, 5 per cent is decorative.

Q. Yes. And what forms of ornamentation do you find are f more importance than the use of the zigzag stitch?

[fol. 1327] A. Those are constructions such as cording, pockets, buttonholes, pleats, darts, ruffles—that area.

Q. Take your appliques that you put on that dress (indicating). The zigzag stitch can be used to put on the applique?

A. Yes.

Q. What kind of a zigzag stitch?

A. It is the basic zigzag stitch.

Q. The basic?

A. The basic.

Q. Do you make your own clothes, Miss Hutton?

A. Yes, I do.

Q. Do you make your own dresses?

A. Yes.

Q. And what types of zigzag stitch do you use in making your own clothes?

A. I am one not liking too much adornment on her dress. I must confess I have used zigzag as decorative on only one dress in the years that we have been promoting zigzag stitching.

Q. You use the functional stitching?

[fol. 1328] A. I use the functional stitching. The dress I am wearing has a great many functional stitches on it, as is true of the many clothes I make today.

The Court: You like tailormade dresses?

The Witness: Yes.

The Court: You use the zigzag to prevent unraveling, don't you?

The Witness: Yes. The seams are finished with the zigzag.

The Court: That material has the zigzag on the end, unless you have a selvage on it?

The Witness: Yes.

Mr. Klots: I would like to put that dress in evidence, your Honor.

(Discussion off the record.)

Q. Did you have any part or role in the development of a 400 series of the Singer sewing machine?

A. Yes. I was asked to work very closely with Mr. Johnson as a consultant to express the customer's point of view.

Q. And what was the feature of that machine that you paid the most attention to?

A. Actually we viewed the machine as a total tool for usage—I mean, we endeavored to make the machine as com- [fol. 1329] plete, yet as simple as possible for the consumer to use.

There were many specifications that were a matter of choice. The straight stitch and all of its implications were considered most important to me, to be of superior quality.

One interesting incident is the design of the general purpose throat plate, the one used when doing any zigzag stitching. There was a choice at one time as to how the undergrooving at the end of the plate which controls the bobbin thread—whether it should favor zigzag sewing or straight stitching, and the decision was influenced towards favoring straight stitching.

Q. Let me ask you this question, coming to the decorative stitch again, does the home sewer require a particular type of zigzag decorative stitch?

A. There are so many types that she does not have one completely in her mind, so that she requires pretty stitches but of no particular type.

Q. What have you observed as to the number of zigzag patterns which the housewife ordinarily employs?

Mr. Weinstein: Objection, your Honor. I do not think the witness is qualified to tell what the housewife thinks.

[fol. 1330] The Court: I understood she was offered as one who had expert knowledge of the field, not only from the sales point of view but from the consumer point of view. I think she has given evidence of it so far by the testimony, which she has given without objection.

You may examine her on it later on. I do not think it would be wise to permit an interruption at this time for the purpose of testing her expert qualifications, but will you make a little note of it on a pad and I will permit you to go into it very thoroughly on cross-examination if you so desire.

Mr. Weinstein: Thank you, your Honor.

Mr. Klots: Would you read the question, please.

(Question read.)

A. They are very limited, and this is based on the fact that the sale of additional cams with both the zigzag attachment and the zigzag machines is very small and has been very small.

Q. That is, you have already testified that Singer offers these additional cams—I forget what the numbers are, but it was offered in evidence; and you say the sales of those additional cams——

[fol. 1331] A. Is very small. For example, the 306 machine, prior to the 319, with it was offered six cams. There were some 24 additional cams. The sale of the extras in that respect were very small, and when the 319 came out we had sufficient in stock that it was decided that since the customer does not avail herself of extra purchase, that we should give them all, so that the 319 carried the full set of 30 cams.

Q. I notice the stitch chart on the 401 machine, which is in evidence, is that flip-up stitch chart. I think it has some 22 patterns.

Did you pick out the patterns that were put on that stitch chart?

A. Yes. We——

Q. That is Exhibit 106.

A. We had a voice in which stitches were placed on the chart, and we also ran every stitch in every combination possible within the multiplicity of the built-in ones.

Q. And you picked out 22?

A. Yes.

Q. Did you think that that was enough?

A. It is more than enough.

Q. Miss Hutton, do sewing machines sold in the United [fol. 1332] States vary as to their different features?

A. Yes, they vary materially.

Q. And would you say they compete even though they vary in different features?

A. Yes, they do.

Q. And what do you think the housewife—what features is the housewife most interested in?

A. We strongly feel the housewife is interested in a full concept of the sewing machine and how well—how easy it is to use, how well it stitches on a wide range of fabrics, how well it feeds those fabrics without causing her any undue difficulty in handling.

She is interested in its durability and whether it operates under many different circumstances without mechanical service or even too much care on her part.

Q. What would you say about the ease of threading—is that important?

A. Ease of threading is extremely important in a sewing machine of any make or type because it must be threaded precisely as it was designed to be. If it is not, it will not stitch properly and sometimes it will not stitch at all.

Q. What about the speed control?

A. Speed control is extremely important for the job of [fol. 1333] detailing on a garment. A machine must start immediately upon contact with the controller. The speed build-up must be gradual and controllable.

Q. What about vision?

A. Vision is important because in many steps of dress construction, one stitch too far means unevenness either in the lapel of the garment or in the bottonhole or in a pocket. Complete control of speed and stitching and vision, to see where you are, is extremely important.

Q. Now I put before you Exhibit 106, which I believe is the 401 machine——

Mr. Klots: Off the record.

(Discussion off the record.)

Q. I put before you a cutaway version of the 401 machine. By that I mean it has a window in it that you can see the inside of it.

Mr. Klots: I would like to offer that in evidence, your Honor, because it is helpful to look at through that window.

Mr. Weinstein: No objection, your Honor.

The Court: Received by consent.

(Received in evidence as Defendant's Exhibit 144.)

[fol. 1334] Q. With the 401 machine in front of you, Miss Hutton, will you point out some of the important features of that machine.

A. To a customer in use, the threading feature is important, and we have a very direct line of threading from spool pin to thread guide, to tension, to take-up, and through several thread guides that can be threaded single-handed and through the needle back, and it is very obvious—in addition to being obvious and traditionally Singer, there is a threading chart in the face plate that opens (indicating). I might say this opens quite easily.

The Court: It opens on edge.

The Witness: Yes.

The Court: And that shows you——

The Witness: It shows the track of threading. It shows you the threading of the bobbin.

Q. All right. What about the needle carrier?

A. The needle clamp, I believe, is what you are referring to. The needle can be replaced with a simple thumbscrew, by loosening the simple thumbscrew.

The needle clamp is so designed that the needle cannot be put in crookedly. It presets itself.

Q. I did not mean to interrupt you. Go right ahead and [fol. 1335] use your own words.

A. The visibility we discussed a bit before, and with it in front of me, it brings to mind the complete visibility because of the slender design of the arm of the machine above the sewing area.

Q. What about the slant needle?

A. The slant needle also is—the needle bar is at a 9-degree angle, bringing it toward the operator, about an inch closer than on a straight needle machine.

The bobbin case is in front of the needle so that the bobbin is merely lifted out, and is a distinct convenience and one which is attractive to customers and educators as well.

[fol. 1336] Mr. Klots: Your Honor noticed the access to the bobbin?

The Court: Yes. Would you say that the sales appeal of a machine depends primarily upon three factors: visual attractiveness and appearance; simplicity in mechanical structure and design; and effectiveness of sewing operation?

The Witness: I think that is a good summary.

Q. Go ahead and tell us some of the other features of the 401 machine.

A. The lifting throat plate is important, instead of using screws and having to use a screwdriver, the throat plate is easily lifted and is removable for oiling. It is also lifted for darning and embroidery work. The stitch length adjustment and the reverse feeding lever are appealing to the customer because we can easily adjust to a given stitch length, the scale is marked from 6 to 20, approximating the number of stitches to the inch. There is also a fine area for a micro stitch adjustment in achieving close satin stitching. Of course, the charts are important.

The Court: All of this is depicted in your instruction book that accompanies each machine?

The Witness: Yes.

[fol. 1337] The Court: It describes what each particular part is that you have indicated and how it is to be operated and where?

The Witness: Yes.

The Court: And the result of its operation?

The Witness: Yes.

Q. What about the gear drive?

A. The gear drive is not quite so easy to see. It is extremely important because the motor is directly geared to the machine. It is all enclosed. It is more than a built-in motor, it is a directly geared motor.

Q. Is that somewhat unusual in sewing machines?

A. It is not unusual in our line of sewing machines. It is especially excellent in giving immediate response.

Q. I mean machines other than Singer machines, what kind of drives do they have?

A. It is usually a belt drive.

The Court: Singer no longer uses the leather belt for mechanical drive of the machine?

The Witness: On some of the less expensive models we still use the belt drive.

Q. You have already mentioned before, when we put the [fol. 1338] machine in evidence, the built-in cams. Was it or was it not a fact that the 319 machine which preceded this machine also had a built-in stack of cams?

A. Yes.

Q. I will have put before you a cutaway copy of the 319 machine.

Mr. Klots: I think we better mark that in evidence, your Honor.

Mr. Weinstein: No objection.

(Defendant's Exhibit 145 received in evidence.)

Q. Will you look at Exhibit 145, the 319 machine with a glass window on it so you can see the inside machinery.

A. Yes.

Q. I think you have already pointed out the way you changed patterns in those machines was to lift one of those levers, and each lever has a printed copy of the design on it?

A. Yes.

Q. Could you lift more than one lever at a time?

A. You could lift one or several or all.

Q. And that would make a different combination of patterns?

[fol. 1339] A. Yes.

Q. It has a replaceable cam also on the outside, does it not?

A. The replaceable cam is controlled by the first lever and is on the front of the machine.

Q. So that the feature of built-in cams and the ability to change the pattern without taking off a cam in the 401 machine was not anything new?

A. No.

Q. Because it existed in the 319 machine?

A. Yes.

Q. And the ability to use two cams at once also existed in the 319 machine?

A. Yes.

Q. In fact you could have used more than two cams?

A. Yes.

Q. So the only new thing from a housewife's point of view as far as changing patterns is concerned on the 401 was to change the pattern by turning a dial instead of flipping a lever, is that right?

A. Yes.

The Court: On 319 could you change the pattern by changing the cam?

[fol. 1340] The Witness: Yes, when you changed the front cam then you increased your multiplicity.

Q. All these features of the 401 machine which you have just been going over, the threading guides, the built-in thread chart, they did not exist on the 319 machine, did they?

A. No, there were no built-in charts.

Q. They were all new features which Singer added for the new machine?

A. Yes.

Q. As a matter of fact, those features except for the built-in cams were also features of the 403 and 404 machine, were they not?

A. Yes.

Q. Miss Hutton, let us go to a little different topic. The machines not only manufactured and sold by Singer, but by other companies, do they have features that the 401 machine does not have?

A. Yes.

Q. What are some of the machines, can you name some of them?

A. The Nechhi Supernova Ultra, the Elna Plana Supermatic, the Kenmore 90, the Brother Super Flairmatic, I believe, and there is another, Vigorelli Fantasy, I think it is.

[fol. 1341] Q. I would like to put before you the Necchi Supernova Ultra machine.

The Court: Has this been offered in evidence?

Mr. Klots: I offer it.

Mr. Weinstein: May we know the purpose?

Mr. Klots: I offer this machine and some of these others that have just been mentioned to show that there are numerous machines with features that the Singer 401 does not have that compete with the Singer 401, and none of these machines have built-in cams, they have only replaceable cams. The purpose is to show that the replaceable cam feature is in effect a minor feature, that these other features are really more important from a competitive point of view. That is the purpose of the offer.

Mr. Weinstein: With the exception of Mr. Klots' statement that the built-in cam is a minor feature, the government I think is willing to agree to everything Mr. Klots says in that many machines have many features that are either found on Singer machines in different form or various other features. I don't think this is in issue here, and if we are going to go through a series of machines which do not have [fol. 1342] anything to do with the principle related in the patents, namely, machine carried multiple cams, if we are going into needles and bobbins and everything else, I think we are wasting the Court's time. It isn't in issue in this case.

The Court: Can I take your first statement as being a concession by the government on the record?

Mr. Weinstein: May I have it read, your Honor?

(Record read.)

The Court: I want to know if this is a concession being made by the government.

Mr. Weinstein: Could we have Mr. Klots' statement read back also?

The Court: I am concerned with your statement. Suppose I give you a few minutes to talk about this. We will take a five-minute recess. I would like to know just what the government's position is on this. It is a factual concession, and I would like it so stated unequivocally on the record.

(Recess taken.)

Mr. Weinstein: Your Honor, I beileve Mr. Klots inadvertently used the term "replaceable cam" instead of [fol. 1343] "multiple cam" and would like to correct his statement.

Mr. Klots: I would like to say when I offered the exhibit, I stated the replaceable cam feature was a minor point,

what I meant to say was that the built-in stack of cams was a minor point.

Mr. Weinstein: I don't think that the government wishes to concede to that revised statement.

The Court: I am not concerned with Mr. Klots' statement so much as I am with the statement you yourself made which was independent of what Mr. Klots said.

Mr. Weinstein: I incorporated Mr. Klots' statement.

The Court: There was an interruption in your thought and then you made the statement. Can I take the statement you made as being a factual concession for the purposes of this case by the government?

Mr. Weinstein: No, your Honor.

The Court: You withdraw the statement?

Mr. Weinstein: Yes.

The Court: What then is the basis of your objection?

Mr. Weinstein: We think the Court's time is being need-
[fol. 1344] lessly taken up with whether the needle is zero degrees or nine degrees——

The Court: Then an objection might be sustained as to a good part of the evidence introduced in this case by the government. The objection is overruled.

(Defendant's Exhibit 146 received in evidence.)

The Court: I take it this has a distinct bearing on the market and availability of substitutes and whether or not there was other competition in the field irrespective of the competition which was created by the issuance of the Singer 401 embodying the patents that they acquired and the licenses that they acquired.

Mr. Klots: Yes.

By Mr. Klots:

Q. Looking at Exhibit 146, which is a Necchi machine, Miss Hutton, will you point out to the Court some of the features on that machine which are not offered by Singer on the 401 machine or any other machine?

A. That are not offered by Singer on the 401 or any other?

Q. Yes.

[fol. 1345] A. This is a replaceable cam machine that has three cam followers, each doing something differently. It is termed a triple impulse action.

Q. They do not each of them make a different zigzag stitch?

A. No, they each control something different in the mechanism of the machine. One controls the swing of the needle from side to side or the lateral movement of the needle or the bight, term it what you will, it is the same thing. Another controls the needle position which means that the design originates from the left, from the right or from the center. The third controls feed motion which means the stitching is automatically controlled forward or backward or the length of the stroke is regulated. There are other features. The pressure that is exerted on the feed is regulated or is a gauge adjustment, it is numbered from 1 to 8. Pressure needs to be regulated for different weights of fabric.

Q. What about a stitch elongator?

A. That relates to the stitching. There is a dial for stitching elongation. There are a number of settings or it may be used at intervals. This serves to throw more needle penetrations into a single rotation of the cam, which, if we start [fol. 1346] out with the short ball stitch, we can wind up with the long ball stitch. The range is something like from 36 to around 200 needle penetrations with the one cycle of the cam.

The Court: Does that control the density of the stitching, the closeness of the stitching?

The Witness: It relates to that, which means the stitch can be very dense and be elongated. Without this, the stitch density is disturbed with elongation.

Q. That cannot be done on the Singer 401?

A. That cannot be done on the Singer machines.

The Court: What can you do on the Singer that you cannot do with this Necchi?

The Witness: Nothing.

The Court: You can do everything?

The Witness: Yes.

The Court: By doing everything, you mean sewing operations?

The Witness: Yes, provided a particular cam was provided, they can make any stitch we can make. Because they have a follower that has the same impulse control as our follower.

The Court: So I understand you to say that this Exhibit [fol. 1347] 146, this Necchi machine, performs all the functions, all the operations which are obtainable from your Singer 401?

The Witness: Yes.

The Court: In addition to these extra features which are on the Necchi, Exhibit 146, which are not on the Singer?

The Witness: Right.

Q. I show you this swatch and ask you if this swatch has on it stitchings that were made by your organization under your supervision and observation on this machine, Exhibit 146?

A. Yes.

Mr. Klots: I offer it in evidence.

Mr. Weinstein: No objection.

(Defendant's Exhibit 146-A received in evidence.)

[fol. 1348] The Court: It seems to me that the testimony of this witness, just given with reference to this Exhibit 146, is very vital to this case. If so——

Mr. Elkins: Well, that will have to be determined, your Honor—in the due course of the proceedings that will be determined.

The Court: When you say "it will be determined" you mean whether her statement is accurate or not?

Mr. Elkins: That's right, your Honor. Whether or not she understood your question as you understood it and as I understood it is a question that will have to be explored.

The Court: Yes.

Mr. Elkins: And it will be explored.

The Court: I would like to have you make a note of that on your yellow pad. I regard that as very important.

By Mr. Klots:

Q. Will you look at Exhibit 146A and show the Court what stitches on that were possible on the Necchi machine, Exhibit 146, and which are not possible on the Singer 401.

A. Rows 7, 8 and 9 from the top are stitches that employ the use of cam control feed and stitch elongation.

[fol. 1349] They also employ the use of the needle position cam follower.

I am sorry, I was incorrect in that these do not employ needle position and cam follower.

The Court: They employ needle elongation?

The Witness: Stitch elongation, cam control feed.

The Court: Wait. I am marking this down.

That is one, stitch elongation; two, cam control feed.

What else did you say? Anything else?

The Witness: I said one thing which was incorrect and I corrected it.

The Court: You say these two features are not available—the stitch elongation and the cam control feed are not available on the Singer 401.

The Witness: These are not available on Singer 401 or any other Singer.

The Court: Not available—I am putting this down simply as a record of your testimony—not available on Singer, either 401 or any Singer; is that correct?

The Witness: That's right.

The Court: I will make it "Not available on Singer models."

[fol. 1350] I simply mark that as a notation of what you testified to concerning this swatch, which is Exhibit 146A.

Mr. Klots: That is a very good way to do it.

The Witness: Now the needle position is illustrated in Rows 1, 2 and 3.

The Court: Let us mark this—1, 2 and 3 from the top. Those three, they employ what?

The Witness: The needle position cam and cam follower.

Q. Which the Singer 401 does not have?

A. Does not have.

The Court: Needle position cam and cam follower—and you say that——

The Witness: This also employs stitch elongation.

The Court: Stitch elongation.

Are those two features available on Singer models?

The Witness: They are not.

The Court: I will make a little notation here, it simply being a record of your testimony, "Not available on Singer." All right.

Q. These additional features on the Necchi machine that you just described to the Court, as I understand it they are not part of any built-in multi-cam zigzag pattern mecha-
[fol. 1351] nism; is that right?

A. May I have that statement again, please.

(Question read.)

A. That's right, these are all replaceable.

Q. They have a separate cam mechanism to make these different features?

A. Yes.

Q. Miss Hutton, I show you this document here and ask you what it is. It is rather tender.

A. This is a feature comparison chart that is used by the sales organization selling Necchi-Elna, to train their organization to combat the Singer 401.

Q. And does it undertake to compare the Singer 401 with the Necchi machine that you just described?

A. It compares the Necchi and Singer, feature by feature. This is the Necchi Supernova Ultra, and the Singer 401 (indicating).

The Court: It is on the right side as you look at it?

The Witness: Yes, the 401 is on the right.

The Court: This is sales propaganda?

The Witness: Yes, sales training.

The Court: What do you mean by sales training?

The Witness: It is not consumer; it is not passed out to the
[fol. 1352] consumer. It is used in training their organization—sales force.

The Court: Do you offer it in evidence?

Mr. Klots: I offer it in evidence.

Mr. Weinstein: We object to it, your Honor. I do not think there is any foundation for it. I do not know who made it, who made the comparisons, who put the thing together, where it came from, and there is no foundation in the testimony of Miss Hutton for this document.

The Court: We will ask her a simple question—two questions.

Have you ever seen this paper before?

The Witness: Yes, I have.

The Court: Where did you see it? Under what circumstances?

The Witness: I saw it originally in the office as an item of concern that Necchi was informing their sales organization thusly.

The Court: Do you know where it was obtained?

The Witness: I do not.

The Court: It was obtained by Singer?

The Witness: By some member of our selling organization.

[fol. 1353] The Court: It was part of your office records, was it?

The Witness: I—yes.

The Court: I am going to take it.

Mr. Weinstein: Your Honor, if we may just press our objection, this makes a purported complete comparison between two machines. I do not think that Miss Hutton purports to be an expert on the Necchi machine, on its mechanical features.

The Court: No. She simply says that this is a chart put out by one of their competitors where there is a distinct comparison made between the Singer machine and this Necchi Ultra machine.

I am going to take it in evidence, and I am going to ask Mr. Klots later to produce somebody from Singer who will testify as to where he got this and what he knows about it; and if necessary to bring down somebody from Necchi—give him a subpoena to come down here.

Mr. Klots: All right.

The Court: If the government questions its authenticity.

Mr. Klots: All right, your Honor.

The Court: Find out from the people who purport to have issued this whether or not it is part of their sales training [fol. 1354] —a subpoena to the general manager here in New York—get him down here as a witness.

I think we should mark this as 146B.

(Defendant's Exhibit 146B received in evidence.)

Mr. Weinstein: The record will show I have an objection.

The Court: Yes, the record will show your objection. The record shows the Court's ruling and the Court's instruction that if this additional evidence is not presented as to the source of this Exhibit 146B, you may move to strike it out.

At this time I am going to take it in evidence.

By the Court:

Q. Looking at this Exhibit 146B, over on the extreme right side I see the notation "S1. Carrying case does not convert to a full size work table."

In the portable Singer—you make a portable Singer 401?

A. The 401 is the same in the cabinet model as the portable except for the addition of a small plastic base.

Q. Does your Singer 401 portable have a carrying case [fol. 1355] that does not convert to a full size work table?

A. The carrying case does not convert to a full size work table.

Q. Then it has "S2. Does not have a free arm for tubular sewing."

I suppose "S" means some designation for Singer—that appears to be common sense.

Does the Singer 401 have a free arm for tubular sewing?

A. It does not.

Q. What is tubular sewing?

A. Tubular sewing does not relate——

Q. Is that a sort of a piping?

A. It relates to the Elna. It is the cylinder bed that is free, so that instead of having a square bed it has a small round bed on which can be slipped a stocking for turning, or you can stitch on a sleeve.

Q. Now "S3. Does not have a calibrated scale to adjust lower tension."

Mr. Klots: May I call your Honor's attention to the fact that you are reading——

The Court: I am reading from what refers to the portable——

Mr. Klots: It refers to Elna, not Necchi.

[fol. 1356] The Court: Yes, but the witness has pointed out that the 146 Necchi has a calibrated scale to adjust lower tension.

The Witness: No, the Necchi has a calibrated scale to adjust pressure.

Q. Pressure.

A. Necchi does not have a calibrated scale for tension, but Elna does have.

Q. Can you make on the Singer 401 Turkish hemstitching?

A. We cannot because it requires cam control feed.

Q. Can you make it on this 146 Necchi, if you know?

A. We did not make it. It is my impression that it could be made because they have cam control feed.

Mr. Klots: If your Honor will look at the lefthand side of this exhibit you will see Item 3 there, which is entitled—which says, "Tuning knob for elongation of design units," and it points to the thing.

The Court: Yes, I have seen that. They have a number.

Mr. Klots: Then on the other side, on the Singer side it says, "No provision" for it.

The Court: I see it. I have been reading that.

[fol. 1357] It appears to be a very powerful sales document. If that is so, it affords some considerable competition.

Have you looked at this, Mr. Elkins?

Mr. Elkins: I beg pardon?

The Court: Are you familiar with this?

Mr. Elkins: Yes, your Honor.

The Court: I thought from your objection that you did not see it before.

Do you dispute that this is a document issued by Necchi to its regular sales force?

Mr. Weinstein: We have no knowledge of that at all, your Honor. We saw it for the first time when Singer presented us a copy of it.

The Court: When was that?

Mr. Weinstein: Last week, your Honor.

The Court: Haven't you, in the diligent preparation of this case that I know you have had, checked up on it?

Mr. Weinstein: No.

The Court: Don't you think you should?

Mr. Weinstein: No, your Honor, we have not.

The Court: I mean, rather than subject the Court to having additional testimony presented, don't you think you [fol. 1358] should be in a position to state that this is or is not a Necchi trade organization or internal organization document?

Mr. Weinstein: Your Honor, we think that is the defendant's burden of proof.

The Court: Of course it is, but I know, or I thought that you are anxious to lighten the burden of the Court.

All right. Apparently with the Court's position of putting you to prove, Mr. Klots, bring somebody down from Necchi.

Mr. Klots: Yes.

The Court: I will have to listen to that testimony even though I thought I might be in a position to avoid it. All right.

Mr. Klots: We will do this as expeditiously, your Honor, as possible, but——

The Court: Don't hurry this. I regard it as very important evidence. I do not want to hurry you.

Mr. Klots: I would like to put before the witness the Elna-Plana Supermatic Machine.

The Court: Don't take my comments to counsel as being any indication that I am at all impatient with your presentation. I regard this as vital evidence, and I do not intend to [fol. 1359] limit you in any way in order to save time.

Mr. Klots: I would like to offer that machine in evidence.

The Court: Any objection?

Mr. Weinstein: Again, your Honor, I think there is no foundation at this point.

The Court: What do you mean by foundation?

Mr. Weinstein: Mr. Klots has not indicated why he is offering it in evidence.

Mr. Klots: I am offering it for the same reason that I offered the Necchi machine.

Mr. Weinstein: No objection.

The Court: He offers to show a competitive machine in the same relevant market.

Mr. Klots: That is the purpose.

The Court: Any objection in view of Mr. Klots' statement?

Mr. Weinstein: No, your Honor.

The Court: Received in evidence by consent.

(Received in evidence as Defendant's Exhibit 147.)

Mr. Weinstein: Your Honor, I would like to correct that. When you say "Received by consent," we have a general [fol. 1360] standing objection to things which we say are not in the same relevant market, and also that we say "relevant market" as generally used is not an issue in this case. We are not waiving our right to object to this. We object to this machine for the same reason that we object to any machine

that is not a machine-carried multi-cam machine coming in evidence.

The Court: That is your objection.

Mr. Weinstein: Yes.

The Court: And I have ruled on it. It is in evidence now as Exhibit 147.

Mr. Klots: This Exhibit 147, I believe, is known as the Elna-Plana Supermatic Machine.

By Mr. Klots:

Q. Miss Hutton, will you just point out on that machine one or two of the features that the Singer 401 or the 400 line does not possess.

A. This is a replaceable cam machine. It has stitch elongation—oh, it does not have stitch elongation. It has cam control feed.

Q. Yes. What else does it have?

A. It has a bobbin in back of the needle which is in a fixed bobbin case.

It has the calibrated bobbin tension adjustment, and it has [fol. 1361] —they are the major ones.

Of course it is very streamlined. The bobbin winder is concealed.

Q. You have a bobbin winder that is concealed.

Now I show you this swatch and ask you if this contains stitches that were made on this Exhibit 147 by your organization, under your supervision and under your observation.

Were they made on this machine?

A. These were made on this Elna machine and by our organization.

Mr. Klots: I offer it in evidence.

Mr. Weinstein: Subject to our overall objection, your Honor, we have no other objection.

The Court: Received in evidence.

(Received in evidence as Defendant's Exhibit 147A.)

Q. Looking at Exhibit 147A, are there any stitches on that exhibit that cannot be made on the Singer 401 or any of the 400 series of the Singer machine?

A. Yes, there are.

Q. Will you show the Court which ones cannot be made on the Singer machines that I have mentioned?

A. The seven lines counting from the bottom of the [fol. 1362] swatch.

Q. That is because of what feature?

A. The cam control feed.

The Witness: (To the Court) This is the Turkish point about which you asked.

The Court: That is the Turkish point?

The Witness: Yes.

The Court: So we will mark that "Turkish point" (Marking).

You say that the seven rows of stitching cannot be made on Singer, right?

The Witness: Cannot be made on Singer.

The Court: I will put that on here simply as a record of this witness's testimony so that we will be able to identify it.

The Witness: Because they require cam control feed.

The Court: Because they require cam control feed, right?

The Witness: Yes.

The Court: I will put that here simply as a record of her testimony.

By Mr. Klots:

Q. Miss Hutton, I put before you another machine which [fol. 1363] is known as the Kenmore, Model 90.

Mr. Klots: I offer it in evidence for the same reason that I offered the Elna and the Necchi machines.

Mr. Weinstein: Is this a replaceable cam machine?

Mr. Klots: Yes.

Mr. Weinstein: We have our same general objection, your Honor. These are all replaceable cam machines.

The Court: By your "same general objection" I take it your objection is, number one, it is the government's contention that the issue of "relevant market" is not present in this case.

Mr. Weinstein: That's correct, your Honor.

The Court: And, two, that this is a replaceable cam machine and therefore in any event is irrelevant.

Mr. Weinstein: That's right, your Honor.

The Court: That is the nature and the total of your general objection?

Mr. Weinstein: Yes, sir.

The Court: I have overruled that for the present—and a specific objection, outside of the general objection, have you any?

[fol. 1364] Mr. Weinstein: No, your Honor.

The Court: It is received in evidence.

(Received in evidence as Defendant's Exhibit 148.)

By Mr. Klots:

Q. Will you look at Exhibit 148 and tell us first whether or not that is a replaceable cam machine.

A. This is a replaceable cam machine.

Q. That is to say, so far as making zigzag patterns, it uses a replaceable cam device?

A. Yes.

Q. And do certain boxes of cams come with it?

A. This is the box of cams (indicating).

Mr. Klots: I will offer that as part of the exhibit.

The Court: Mark that 148A.

(Received in evidence as Defendant's Exhibit 148A.)

A. This machine is more similar to the Necchi. It has triple-action cam followers, one controlling the bight, one controlling needle position, and one controlling feed motion.

[fol. 1364a] The Court: What is the country of origin of this machine?

Mr. Klots: I was going to ask that in the next question.

The Court: Oh.

Q. Where is that machine made, Miss Hutton?

A. It is made in Japan.

Q. And it is sold by what company?

A. Sears, Roebuck.

[fol. 1365] Q. Did you want to say any more about the features that this machine has that the Singer 401 and the other 400 series do not have?

A. This has stitching elongation and has a special device for making button holes automatically, which is a separate

plate attached which takes the feed motion from the feed shaft and pinion which works in the cams which are replaceable for size underneath the button hole plate. It has another unit of cams for button holing.

Mr. Klots: We might as well offer that in evidence too.

(Defendant's Exhibit 148-B received in evidence.)

The Court: Can you do this whole operation on the Singer 401?

The Witness: We can make button holes on the Singer 401, but we do not have the means of controlling the length of the button hole.

The Court: You can make only a standard button hole?

The Witness: The control of the length is a manual stop.

The Court: This is controlled by the machine, on this [fol. 1366] Kenmore?

The Witness: Yes.

The Court: You can make a long button hole or a short button hole by putting in this attachment?

The Witness: Yes.

The Court: But in the Singer you have to manually stop it?

The Witness: Yes.

The Court: When you reach your desired length, you have to stop and come back on the other side?

The Witness: Yes.

The Court: With this attachment on this Kenmore, it is all done automatically?

The Witness: Yes.

The Court: You have a sample here?

The Witness: We did not make that sample, that is part of the equipment.

Mr. Klots: I have a swatch here, sir.

By Mr. Klots:

Q. I ask you if this swatch was made on Exhibit 148?

A. Yes, it was.

[fol. 1367] Q. By your people and under your supervision and observation?

A. Yes. They made one button hole of each type, the eyelet, the eyelet end and the straight button hole.

Mr. Klots: I offer that.

Mr. Weinstein: We have no specific objection.

(Defendant's Exhibit 148-C received in evidence.)

Q. Would you look at Exhibit 148-C, which you say was made on this Kenmore 90 machine sold by Sears Roebuck and made in Japan, and point out some of the stitches on that that cannot be made on the Singer 401, 403 or 401? Start with the button holes at the bottom of the swatch.

A. The ten rows of stitching at the bottom of the swatch employ cam control of feed and stitch elongation. Singer does not have these facilities.

The Court: You cannot produce those stitches on the Singer 401 or Singer models?

The Witness: That's correct.

Q. Short of producing a special cam, you cannot produce those?

A. No.

[fol. 1368] The Court: I will mark here that these employ stitch elongation and what else?

The Witness: Cam control.

The Court: And cannot be made on Singer machines?

The Witness: That's right.

The Court: I am putting this on the swatch simply as a record of this witness' testimony.

Q. Anything else on that swatch?

A. The remaining stitches above are stitches which illustrate the cam control and needle position, the four groups of three above it.

The Court: These do what? These 12 rows are examples of what?

The Witness: Cam control and needle positions.

The Court: Those 12 lines cannot be produced on the Singer machine?

The Witness: It requires explanation, your Honor.

The Court: Give us the explanation.

The Witness: The arrowhead illustrates it well. You have seen an arrowhead made on Singer. The thing we cannot do is to elongate that arrowhead. Another thing we cannot do [fol. 1369] is by putting into action another cam follower

use that same cam to produce the right and left needle position variation shown in the line of stitching above and below the arrowhead. We would require a separate cam.

The Court: You cannot shift from one side to the other unless you put a new cam in?

The Witness: That's right, your Honor.

The Court: All right.

By Mr. Klots:

Q. I would like to put another machine before you.

The Court: Incidentally, on this Kenmore model that we have just had, Exhibit 148, can you produce all the sewing products on this exhibit that can be produced on the Singer 401?

The Witness: Yes, providing there is a cam designed to do the particular function.

Q. I show you this machine, Miss Hutton.

Mr. Klots: First I will offer it in evidence. This is a Vigorelli Fantasy model.

Mr. Weinstein: Is this a machine under which Singer holds a license?

Mr. Klots: Yes, it is.

[fol. 1376] Mr. Weinstein: Singer is licensed to produce this machine?

Mr. Klots: It is licensed as to certain parts of it. I am not sure it is licensed to produce the entire machine.

Mr. Weinstein: We have no specific objection, your Honor.

The Court: Received.

(Defendant's Exhibit 149 received in evidence.)

By Mr. Klots:

Q. Will you look at Exhibit 149 and tell us whether or not this is a replaceable cam machine?

A. It is.

Mr. Klots: Your Honor will recall that Vigorelli has the right to make a built-in cam machine if it so desires.

Q. What does it have that the Singer 401 and the other 400 series machines do not have?

A. This has many things. It has cam control of feed. It has stitch elongation. It has a lateral movement of a section of the bed of the machine that permits an extremely decorative stitching. It affords great multiplicity in the use of the [fol. 1371] various dials that we see on the front of the machine that give greater variety to the stitching patterns.

Q. Did you mention the cam control of the lateral feed?

A. Cam control, yes, section of the bed for lateral feeding. This is entirely different from any other machine I know of.

Q. What do you mean by lateral feeding?

A. All the zigzag machines that we have discussed up to this point have been limited in the width of the decorative stitch that could be performed by the swing of the needle which is from three-sixteenths to a quarter inch maximum on all zigzag machines. This has a lateral swing that approximates three-quarters of an inch. The needle does not swing that far, but this section of the bed moves in and out. I think I can demonstrate that by a motion of one of the controls.

Q. Will you show the Court what you mean by that lateral swing?

A. I am rotating the dial that controls the cam follower for this function, and the whole bed of the machine while stitching moves back and forth, the whole feeding element, the stitch forming element.

[fol. 1372] The Court: That is a feature that Singer does not have?

The Witness: This is the only machine I know that has it.

The Court: I have observed it move.

The Witness: It is fantastic, Fantasy is a good name for it.

The Court: What is the effect of it?

The Witness: It gives greater pattern width.

The Court: You can put a broader width to your stitching?

The Witness: Yes.

The Court: It is very ingenious.

Mr. Elkins: I don't think it is particularly ingenious, I don't think it is fantastic at all, your Honor.

Q. I show you this swatch and ask you if these stitches were made on this swatch by Exhibit 149 under your supervision and observation?

A. Yes.

Mr. Klots: I offer it.

Mr. Weinstein: No specific objection.

(Defendant's Exhibit 149-A received in evidence.)

[fol. 1373] The Court: This machine apparently permits a more varied embroidery work on garments?

The Witness: Yes.

The Court: Can you also put this on sweaters or knit goods too?

The Witness: Within limit. A backing is required and more careful handling. The zigzag varieties are stretched, so it would be practical.

The Court: You say none of these large elongations can be accomplished with the Singer machine?

The Witness: That is correct.

The Court: This was brought about primarily by the movable base which moves by a cam?

The Witness: Yes. It functions on all stitches except those near the button holes, the six lines at the top of the swatch do not employ the lateral motion of the bed of the machine. You will notice stitching elongation in all of these patterns.

The Court: The design is either stretched out or contracted?

The Witness: Yes.

The Court: You lack the feminine touch if you do not appreciate the fantasy of this machine, Mr. Elkins.

[fol. 1374] Mr. Elkins: It is such a heavy machine that it might be used for industrial purposes. I do appreciate it to that extent.

The Court: The witness has just been able to move the machine herself without any apparent difficulty.

The Witness: I believe there was a question about the bed of the machine.

The Court: My question was whether the elongation is controlled by the bed that moved on the cam.

The Witness: The elongation of pattern is not. The exaggerated width is. The difference between this type of width and this type of width, your Honor.

Mr. Klots: Pointing to the top lines and then the bottom lines.

The Court: Yes.

Q. I think, Miss Hutton, we have one more of these machines to show you.

Mr. Klots: This machine is a Brother Flairmatic 190-B model. I offer it in evidence.

Mr. Weinstein: We have no specific objection, your Honor.

[fol. 1375] The Court: Received.

(Defendant's Exhibit 150 received in evidence.)

By Mr. Klots:

Q. This machine, Exhibit 150, is made in Japan, is it not?

A. Yes.

Q. This is a manual zigzag machine?

A. Yes, a manual zigzag machine.

Q. Manually operated zigzag machine?

A. Yes.

Q. Tell us some of the things that it has that the Singer 401 does not have?

A. The most significant point is the built-in button hole device.

Q. Which enables you to do what?

A. Which controls—it has a built-in cam control of feed and of needle position and of bight for the purpose of making a button hole.

Q. If that is true, why is it easier to make a button hole on this machine than on the 401?

A. We merely put our material under the foot, press the button, engage the machine and it completes the button hole without further assistance from the operator. This has a few other features.

[fols. 1376-1376a] Q. That the 401 does not have?

A. It has a three position feed dog height.

Q. What do you mean by a feed dog height?

A. The feed dog height is either up for a normal sewing, a movement which sets it down so the rise is not so high for sewing on silk as indicated here, the out-of-use position is indicated as darn. When one is using hoops, the darn setting is used.

Q. That is different from the 400 series machines?

A. Yes.

Q. What about the reverse, how do you operate the reverse?

A. The reverse of the feed?

Q. Yes.

A. Push button. It has a dial stitch length regulator and a push button.

Q. What about the bobbin winder on that machine, is that a special kind?

A. It is an automatic bobbin winder that is built into the machine. It is a neat arrangement.

* * * * * * *

[fol. 1377] Direct Examination Continued.

By Mr. Klots:

Q. Miss Hutton, what part does your organization play, and by that I mean your educational organization—what part does it play in the merchandising or marketing of Singer sewing machines?

A. I mentioned that we had a staff of field representatives who travel constantly among our shops in the United States. These girls carry programs of employee training on product which includes knowledge of the products as well as sales demonstrations.

Our group who operate in the New York office normally prepare, in conjunction with the sales promotion department, standard demonstrations for the presentation of a sewing machine to a customer. These are used as both training guides and to augment their selling conversation.

Fabrics are also supplied for these demonstrations.

Q. Do you give any advice with respect to the features of [fol. 1378] the sewing machines——

A. Yes.

Q. —on which the home owner places emphasis, for instance?

A. We work with the advertising department in the preparation of advertising copy as to the ultimate use the customer will make of the machine, and the advertising—the emphasis on features that will appeal to the home sewer in use, and of course we have discussed our sewing courses.

We have a dressmaking course and we have courses given free with the machine to new purchasers. These courses are the evidence or proof of the operation of the machine, and we teach in these courses things that would appeal to the customer.

Q. Do you make any effort to keep abreast of competitive machines and new developments?

A. Yes. We are required from time to time to do an evaluation type of sewing test on competitive machines. These reports are submitted to Singer Manufacturing Company—to Mr. Bruder—and in our sales—in the business, they eventually find their way to the product development people.

[fol. 1378a] Q. Now you said, I think, a minute ago that you advised the advertising department regarding features to emphasize in their promotion from time to time.

Is this advice usually accepted by the advertising department?

A. We work with them, we discuss these things, yes. Yes, our advice is accepted by them.

[fol. 1379] Q. Now coming back to this matter of functional zigzag stitches, would you just tell us again briefly the names and purposes of the three types of functional ones that you mentioned?

A. The basic zigzag stitch?

Q. Yes. What does it do, again?

A. It is used functionally for seam finishes, for seaming in certain special instances on heavy seams, in making hairline seams on shear materials, like when we are doing a sheer collar; it is used for button holes; it is used for sewing on buttons.

Q. How about applique?

A. It is used for applique.

Q. And what is the second of these stitches you mentioned?

A. The second of these is the blind stitch. Blind stitch is used for over-edging seams, as a seam finisher, again. It is used for hems, to duplicate hemming.

Q. Finally, the multiple zigzag stitch?

A. That is used for finishing seams on heavy tweeds. It is used for joining elastic to fabric. It is used for joining elastic seams. It is used in making an abutted seam in interfacings for the tailored effect.

[fol. 1380]

Q. And is it or is it not true that the basic zigzag stitch is also used ornamentally as a satin stitch?

A. Yes, the basic zigzag stitch may be used in itself ornamentally or in combination with applique, what the applique

might be, of late, and the blind stitch finds an ornamental use.

Q. Now will you tell us whether or not these stitches that you just recounted can be performed with equal ease and equal effectiveness on a sewing machine with a multiple cam mechanism and a sewing machine with a replaceable cam mechanism.

A. Yes.

Q. Would you tell us whether these stitches can be performed with equal effectiveness on a sewing machine with a manually operated zigzag mechanism?

A. Yes.

Q. Now, would you tell us whether these stitches can be performed with equal ease on a sewing machine with a manually operated mechanism?

A. Of course, the ease depends upon the interest and skill of the operator. I would say that it is slightly less easy. It is entirely within the capacity of the home sewer.

[fol. 1381] Q. Now will you tell us whether or not these particular zigzag stitches that you have just discussed can be performed with equal effectiveness on a sewing machine with a multiple cam mechanism, a sewing machine with a replaceable cam mechanism, a sewing machine with a manually operated mechanism, and a straight stitch machine with a manual zigzag attachment?

A. Yes, except for the button holing and as we have stated in connection with the zigzag machine.

Q. Yes.

A. The straight stitch machine with a zigzag attachment will not do the button holing. It requires an extra attachment for button holing.

Q. Yes. I asked you whether these could be performed with equal effectiveness. Now I ask you whether or not the same zigzag stitches can be performed with equal ease on a sewing machine with a multiple cam mechanism, with a replaceable cam mechanism, a manually operable mechanism and a straight stitch machine with a zigzag attachment?

A. As I have so stated, except for the manual machine and the matter of customer dexterity.

Q. What would you say as to the relative ease of use of all [fol. 1382] four of the above machines for either functional or ornamental stitching, relative ease of use?

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A. Mr. Klots, the question was equal ease?

Q. Equal ease.

A. It is not quite as easy. Of course, ease is a matter of a personal aptitude. It is not quite as easy on the manual as it is on the others.

Q. And what do you mean when you say it is a matter of personal choice? Is that what you said?

A. Yes, it is a matter of personal choice as to which type [fol. 1383] one prefers. My own mother preferred the replaceable cam type to the two dialing stitch and to the built-in cam mechanism.

Q. You have mentioned the fact that you are familiar with the straight stitch sewing machines having zigzag mechanisms for making a zigzag stitch. Have you ever seen or heard of a straight stitch machine sold today which is not adaptable to taking a zigzag attachment?

A. No. Straight stitch machines sold today will take a zigzag attachment.

Q. Now, the Court has asked you——

Mr. Weinstein: Your Honor, I ask that that answer be stricken. Is the witness testifying that every straight stitch machine will take an attachment?

Mr. Klots: That was the question, as I understood it.

Mr. Weinstein: Yes. Are you saying that you know from your own knowledge that every straight stitch machine——

The Court: Don't you think that would be a proper subject for cross-examination?

Mr. Weinstein: I don't think the witness is even competent to testify as to that, your Honor. She hasn't testified that [fol. 1384] she has examined every straight stitch machine.

The Court: Is this an objection to the question?

Mr. Weinstein: Yes, it is, your Honor.

The Court: Well, objection overruled, and you may cross-examine her on that subject. That is a matter that you might well put down on that yellow pad for cross-examination.

By Mr. Klots:

Q. The Court asked you at pages 1309 and 1310 of the record as to certain stitches that appeared on the swatch made by the 404 machine, which is Exhibit 141-C, and it had to do with the satin stitch, I believe. No, I am wrong about that.

The Court: It had to do with the density of the stitching or the closeness of the stitch.

Mr. Klots: That's right. But it wasn't the satin stitch. I was wrong about that. It was the arrowhead stitch.

Q. And if you will look at these Exhibits 141-C and 106-C, I think that will refresh your recollection as to the arrowhead stitch, and his Honor made a comment about the fact that the 404—let's see what he did say.

[fol. 1385] The Court: My comment was, as I recall it, the density of the stitching to the closeness of each stitch, and I asked her whether that was due to the speed of the machine or to the fault of the mechanism or to what it was due, and the witness gave me an answer.

Mr. Klots: That's right.

By Mr. Klots:

Q. Now what have you— say about that in further explanation, Miss Hutton, as to whether it would be possible on the 404 machine to make as dense an arrowhead stitch as on the 401 machine?

A. The density of the stitch on both the 404 and the 401 machines is controlled by the stitch length regulator, which is the same. If the stitch made with the 404 and the zigzag attachment has been made more dense, it would have been a shorter pattern design because there are 12 needle penetrations to complete the arrowhead while there are 24 needle penetrations in the cam cycle of the 401 and 403 machines.

The Court: By that am I to understand that the cam cycle determines the density of the stitching?

The Witness: The cam cycle determines the density of the stitching and at the same time maintains equal length [fol. 1385a] of pattern.

The Court: Does it determine the density of the stitching?

The Witness: No, because the density of the stitches is determined by the stitch length regulator independent of the cam, and that is the same that we use for regulation of straight stitching.

[fol. 1386] Q. Could you make an arrowhead stitch on the 404 machine that was as dense as the one on the 401?

A. Yes.

Q. But it would be a little shorter arrowhead, is that it?

A. Yes.

Mr. Klots: That is the point, your Honor.

Q. And of course the arrowhead stitch is a decorative stitch and not a functional stitch, is it not?

A. Yes.

Q. Miss Hutton, when a customer comes into a Singer store, does the customer indicate that he or she is familiar with the various features of the Singer sewing machine?

Mr. Weinstein: Objection, your Honor.

Q. Or anyone else's machine?

Mr. Weinstein: Objection, your Honor. That is clearly hearsay.

The Court: I do not know. She may know from her own observation.

Mr. Weinstein: Well, if she wants to testify as to specific customers——

The Court: She can testify as to general observations. [fol. 1387] I do think, however, it would be better to reframe the question to inquire about it.

Q. From your experience, which I think you have already testified to, as to estimating customer demands and what the customer wants, what would you say as to whether a customer, when he comes into a Singer store, indicates that he is familiar with the various features of the Singer machine?

A. Very few of our customers are familiar with the features of the machines. For example, the greatest number of our sales are derived from customers coming into our stores to buy notions, parts, needles and sundry other items.

The Court: Assuming when you have a customer come in, a prospective machine customer, do most of your customers come in as comparison buyers or do they come in looking for a specific type of machine to be exhibited and demonstrated to them?

The Witness: There are very few that come in as comparison buyers who have been to other sewing machine shops.

The Court: By "comparison buyers" I do not mean a commercial comparison shopper.

The Witness: No, no.

[fol. 1388] The Court: I mean a housewife.

Does she come in with a definite idea or does she come in after canvassing the field?

The Witness: Very few come in after canvassing the field. A customer, if she is a direct machine customer, will want to see a single machine. She doesn't know the difference between one type and another.

Q. Did you ever know or hear of a customer in your experience coming into a store and asking specifically for a machine which changes the zigzag pattern by a dial or tuning knob?

A. No.

Mr. Weinstein: Objection, Your Honor.

The Court: She can testify as to what her experience has been, and you can cross-examine her on that.

Objection overruled.

Q. In your experience, Miss Hutton, do sewing machines sold in the United States compete with each other notwithstanding that they may have different features?

A. Yes.

Mr. Weinstein: Objection, your Honor.

The Court: That is a little broad. I will permit it but I do not know what it embraces in that sentence. It is kind [fol. 1389] of broad.

Mr. Weinstein: I do not know how the witness can answer that, your Honor. It is a little hard for us to determine what it means.

The Court: Yes, I think so too. We will let her answer stay in, but, frankly, I cannot give it too much weight.

Q. Did you understand the question to refer to household sewing machines?

A. Yes, I did.

* * * * * * *

[fol. 1390] Cross-examination.

By Mr. Weinstein:

Q. Miss Hutton, I direct your attention to the Singer 401, 403 and 404 machines. They are all part of what you call the Singer slant needle line?

A. No. I said the Singer slant needle series.

Q. Slant needle series. What do you mean by slant needle series?

A. They are machines with many common features and many common parts. The slant needle, of course, I believe is rather obvious in outward design.

Q. Do they all have the same angle on the needle?

A. Yes.

Q. I direct your attention to the 401 machine. It has this hinged door on the front of the machine which gives access to the needle mechanism, does it not?

A. I do not call it the needle mechanism. It is also a presser bar and needle bar.

Q. Is that also true of your 403 machine?

A. That it has a slant needle?

Q. No. That it has a hinged opening which gives access to that area.

A. Yes.

Q. Is that true of every one of your slant series?

A. Yes, so that I can demonstrate it.

[fol. 1391] Q. Is it true that every one of them has the same tension adjusting mechanism?

A. Yes.

Q. Is it true that the visibility, except for a few slight differences in the cabinets, is essentially identical? That you have the same visibility features with respect to looking at the needle in one machine as you do with the other two?

A. Yes.

Mr. Klots: I assume it is clear you are talking about the 401, 403 and 404.

Mr. Weinstein: That's right, Mr. Klots.

Q. Is it true that the bobbin case is identical in the sense that is has access through the front and is exactly the same part?

A. Yes.

Q. Is the basic gear drive the same?

A. Yes. I assume you mean the underneath motion.

Q. Yes.

A. There are many gears.

Q. Is it fair to say, Miss Hutton, that every one of these machines is identical to each other with respect to every

major feature of the machine except the needle mechanism? In other words, is every feature the same except in the 401 [fol. 1392] multi-cam feature, the 403 or replaceable cam feature and in the 404 the straight stitch and attachment feature?

The Witness: May I hear that question again?

(Question read.)

A. If you are speaking of features, yes—if we understand your term to mean the same thing.

Q. Let me direct your attention for a moment to the Singer 404 machine.

Mr. Weinstein: Let the record show that Miss Hutton is given Exhibit 141 and Exhibit 141A.

Q. Let us assume that a housewife is using the machine as a straight stitch machine, and she decides that she wishes to use it in order to put a zigzag stitch in the material. Would you describe for us step by step what she has to do in order to get a pattern out of this machine, using the zigzag attachment.

The Court: The witness has before her Exhibits 141 and 141A, and that is known as the straight type—319, is it?

The Witness: 404.

The Court: —404 machine, Singer.

A. We remove the presser foot screw; we place the attachment on the machine from the back (indicating), the fork [fol. 1393] arm fits over the needle clamp screw, and we tighten the thumbscrew (indicating).

The Court: Of the attachment.

A. This should be tightened with this screwdriver.

Q. You say that should be tightened with a screwdriver?

A. Yes.

Q. Does a screwdriver come with it?

A. It is part of the accessories.

Q. Then what do you do?

A. Place the cam in the machine.

The Court: Place the cam in the attachment which has been attached to the needle bar—yes.

Q. Do you swing open that hinge, that door over the cam mechanism?

A. Yes.

The Court: She has opened the door to the receptacle for the reception of the information of the replaceable cam, which is located on the attachment, and she has placed the cam in the receptacle and closed the door.

Q. Would you not have to select a cam from out of the box and examine it in order to determine what pattern is chosen, [fol. 1394] or in order to select a particular pattern?

A. Obviously.

Q. Then you are ready to start your machine up?

A. Yes.

Q. You then turn on the electric current and you are ready to make a zigzag pattern?

A. Yes.

Q. At this point, if you decide to go back to straight stitching, you would have to remove this mechanism, is that not true?

The Court: Remove the attachment mechanism.

Q. The attachment mechanism, 141A.

The Court: That's right.

A. No, the attachment will straight stitch a limited distance.

Q. A limited distance?

A. Yes.

Q. How long is that distance?

A. It will stitch as long as one wants to, but one would not do it simply because of the bulk of the attachment.

Q. I see. So, in other words——

A. One would not make a dress with a zigzag staying like that.

[fol. 1395] Q. A knowledgeable sewer——

A. Any sewer.

Q. —would remove it and take to straight stitching?

A. Yes.

Q. And then if she chose another pattern, she would have to go through the same procedure, on another piece of material perhaps and put another stitch on that material; is that correct?

A. Yes, but home sewers organize their work a little bit better.

Mr. Weinstein: I ask that that answer be stricken, your Honor.

The Court: No, it will stand. It is informative.

Q. You were asked on your direct testimony, I believe, by his Honor whether or not this mechanism worked equally well on materials of great thickness, and I believe you answered that it did to an extent—I mean within reasonable thickness of the material. Is that true also with respect to very thin material? Would she use——

The Court: Wait.

A. I lost you.

[fol. 1396] The Court: Give her a chance.

Let me understand this again. With this attachment the needle does not swing laterally?

The Witness: That's right.

The Court: But the material itself which is being sewed is swung laterally back and forth by the attachment?

The Witness: That's right.

The Court: And the pressure of the attachment on the material.

The Witness: Right.

The Court: Does the thinness of the material have any effect upon the efficiency of the operation of this attachment when it is thrown into zigzag sewing? That is what counsel meant to ask.

Mr. Weinstein: Thank you, your Honor.

The Witness: It is not making—this is comparative to anything else?

The Court: Suppose you give me that answer again.

The Witness: I mean, I am trying to clarify the question. I mean, do you want a comparative answer?

The Court: No. Counsel wants to know—and I would like to know—does the efficiency of this attachment on this [fol. 1397] straight stitch machine decrease as the material gets thinner to such a point that if the material is too thin, like a voile——

The Witness: Voile is thin and soft.

The Court: Yes.

The Witness: Softness has greater effect than thinness. This is true of any sewing operations.

The Court: And that is so with any machine.

The Witness: Yes, that is why I was interested in getting a comparison because we have limits with every home sewing machine.

Q. Let me rephrase that question.

Is it not true that using the zigzag attachment, there is a limitation imposed on this machine that would not be imposed upon the 403 and the 404 machine with respect to very thin or very soft material?

The Court: Better break that up—first "very thin material."

Q. Very thin material. I am concerned with the problem of puckering.

A. We are getting into areas that require refinement. Soft materials—all zigzag decorative stitching on soft materials is supported with something that is removed after the garment is finished.

[fol. 1398] The Court: A sort of stiffening material.

A. Where you have limitation with the zigzag attachment, in the sideway motion of the foot, you also have a limitation on all zigzag sewing machines of any kind, with the size of the needle hole underneath it, that the soft fabric will clog down into.

Q. Do I understand your testimony correctly to say that you have no limitation using a zigzag attachment which moves the material as opposed to the needle on any material?

A. I wouldn't say that of any sewing machine in the world.

Q. With respect to the other two Singer sewing machines.

A. I just said that we have a limitation here. We also have a limitation in the other—in any zigzag machine. The cause and effect is different, but it is still a limitation.

Q. Are the limitations identical?

A. They are not identical. They are different. They come from a different mechanical cause.

Q. Thank you. I think that answers the question.

Now let me direct your attention to the 401 machine and the 403 machine.

[fol. 1399] Is it not true that these two machines are identical except as to the difference which arises out of the different cam features?

A. It is not true.

Q. It is not true. Would you detail the differences other than the differences which go to the cam features.

A. If you are talking about features, that is one thing. If you are talking about mechanics, that's another.

Q. What does the 403 machine have or do that the 401 machine does not do?

A. You are talking about operations now?

Q. Yes. Aside from the zigzag pattern mechanism.

A. Nothing.

Q. Nothing.

A. Aside from the zigzag pattern mechanism.

Q. Yes. In other words, do you have any feature with respect to tension on the 403 machine——

A. No, it is exactly the same.

Q. It is exactly the same?

A. Yes.

Q. Aside from the zigzag pattern mechanism, is there anything that the 401 machine will do that the 403 machine [fol. 1400] will not do?

A. No.

Q. Is it not true that for all intents and purposes, aside from the difference as to the cams, these two machines are identical—cam mechanisms?

A. Yes.

Q. So that when a customer comes in to the Singer shop and makes a choice between the 403 machine and the 401 machine, their choice is based on the difference in the cam mechanism?

A. Providing the customer has had an opportunity to make a choice.

Q. Providing the customer has examined the machine and makes a sound choice——

A. Yes.

Q. —that should be the basis of the choice?

A. If the customer has examined both the 401 and the 403, the basis for choice can be more than feature; it can be price.

Q. It can be price?

A. Price is an element in any purchase.

Q. How much does the 401 machine sell for in a portable carrying case?

A. I am not qualified to quote prices because I am not [fol. 1401] constantly quoting them, and we make a practice of not quoting prices without reference to our price sheets.

The Court: All these machines are made in the same color pattern?

The Witness: Yes.

The Court: You do not vary one model in colors, do you?

The Witness: These machines have been in slightly different color combinations, during a transition. However, they are——

The Court: Suppose a lady comes in and she wants to buy the 401 in a black color——

The Witness: No, no.

The Court: She has to take this color?

The Witness: Yes.

The Court: She cannot buy these machines in different colors?

The Witness: No, there is not a color selection.

The Court: Like an automobile. All right.

Q. Does Singer have a one-price policy, do you know, with respect to these 401, 403 and 404 machines?

A. Yes.

Q. In other words, if a customer wants to purchase this [fol. 1402] machine at retail, she pays the same price no matter what shop she goes to?

A. Yes.

Q. You do not have a policy of bargaining on the machines?

Mr. Klots: I am not sure that the witness is qualified to answer.

The Witness: I do not know what he means.

The Court: He means, suppose I go into a store to buy a machine and I have a 1492 model that I want to trade in. Do you have a standard book that says a 1492 model shall be traded in for $20 and that is the standard price in every shop, or is there a little element of give-and-take on trade-ins?

The Witness: Trade-ins——

The Court: You do take trade-ins, don't you?

The Witness: Yes. The trade-ins are always appraised. There is a limitation within which the sales person must operate in his appraisal.

The Court: All right.

Q. Let us direct ourselves to a customer that comes in to buy a machine for cash without a trade-in. Do you know whether or not Singer has a firm price policy?

A. Yes, they do.

[fol. 1403] Q. They do. Thank you.

Now it has been stipulated, Miss Hutton, that the 401 machine in the carrying case—portable carrying case, retails for $340 and the 403 machine retails at $280, which is a difference of $60.

A. Yes.

Q. Assuming that a buyer comes into a store, Miss Hutton, and is to make a sound choice and is fairly shown the differences between these two machines by the Singer personnel, is it not true that that choice must be made solely on the difference in the cam mechanisms?

Mr. Klots: I thought that question was answered.

Mr. Elkins: It is not.

The Court: I think it is obvious that the choice is frequently influenced by—not only with older people but by younger people, if they are working people—how much they will spend for a machine. It is the working people that buy these machines. It is the people who have to cut their cloth according to their measure. That is the reason why they have these sewing machines, and they have so much to spend and they put so much aside for this budget.

Q. Aside from price, are not some customers that come [fol. 1404] into the Singer shops attracted, and in fact sold by the fact that you merely dial a stitch on this machine, on the 401 machine?

A. I wouldn't say so.

Q. In your experience, talking to Singer personnel and speaking to people in the advertising department, would you not say that that is the case?

A. I think Singer purchasers are sold because we have maximum facility with a minimum of effort on the part of the customer, with a minimum of complication.

Q. That is important to many shoppers, is it not?

A. Yes—simplicity.

The Court: It is important that the Singer Company has a reputation for service on its products?

The Witness: Oh, extremely important because——

Q. You get the same service irrespective of whether you buy the 401 or the 403 or the 404, is that not so?

A. Yes, you get the same service.

Q. Let me just clarify this one point once again, Miss Hutton. I am not sure that we understand each other exactly right.

The difference between the 401 machine, which is the [fol. 1405] machine-carried multiple-cam machine, and the 403 machine, which is the replaceable cam machine, resides in a single feature of their having different cam mechanisms?

Mr. Klots: I thought he asked that question a few times.

The Court: He already has, but let her answer it again. This is cross-examination. The witness will give the same answer.

A. Yes, sir.

[fol. 1406] Mr. Klots: I assume he is talking about the physical features and not the price features of it.

Mr. Weinstein: I am talking about the physical features, Mr. Klots, yes.

By Mr. Weinstein:

Q. Miss Hutton, I show you this and ask you if you can identify it?

A. Yes.

Q. Can you identify it?

A. Yes.

Q. Have you seen it before?

A. Yes.

Mr. Weinstein: I ask that it be marked for identification.

The Court: What is it? Why don't you offer it in evidence?

Mr. Weinstein: I will, your Honor.

The Court: Offer it in evidence right away and save time, if you think it is material and if there will be no objection.

Mr. Klots: I have no objection. I have a copy.

The Court: Received.

[fol. 1407] (Received in evidence as Government Exhibit 200.)

The Court: Let the witness tell us what this paper is. What is this paper that has just been marked in evidence?

The Witness: This is national advertising that appeared in six magazines during the spring of 1959.

The Court: This is a reproduction of a Singer ad that is nationally advertised. All right.

By Mr. Weinstein:

Q. Was this advertisement shown to you prior to its being placed in these magazines?

A. Undoubtedly.

Q. This advertisement reads with respect to the 401: "Famous Slant-o-Matic . . . finest fully automatic sewing machine you can own. Lets you create thousands of decorative stitches, just by 'tuning' a knob. Also mending, buttonholing . . . even button sewing!" That is true. Doesn't that accurately describe the 401 machine?

A. Yes.

Q. Under the 403 machine, which is described as a sister to this 401 machine, it says: ". . . brilliant automatic machine. Has many features of the Slant-o-Matic, at a lower price. Simplified threading, handy 'drop-in' bobbin [fol. 1408] in front of the needle, fine, smooth straight-stitching." That is equally true of the 401 machine, is it not?

A. Yes.

Q. Then it says: "Comes with a set of Fashion Discs for fancy stitching, too. Just slip a disc onto the machine. Presto! You're decorating linens, curtains—things for the family." Does it not?

A. Yes.

Q. When does this advertisement appear in the six magazines that you mentioned?

The Court: You have the dates down at the bottom. Don't you see them?

Mr. Weinstein: Yes.

The Court: It is pretty expensive advertising, too, in those magazines. They are high priced magazines for advertising.

Mr. Weinstein: I am sure that is true, your Honor.

I will want to read one more line.

The Court: Apparently this was a double page spread. Was it?

The Witness: Yes.

The Court: Quite expensive.

[fol. 1409] By Mr. Weinstein:

Q. Singer has devoted certainly more than twice as much space to their 401 machine in this ad, have they not, Miss Hutton?

A. Yes.

Q. Would you not say there are a group of customers who have a specific interest and specific desire to buy the most fully automatic machine that Singer produces?

A. That's what we try to cultivate.

The Court: I see you have at the bottom here, on the right, the line "Choose the one that suits your budget and sewing needs."

The Witness: Yes.

The Court: Do you know whether this was intended to appeal, this ad, to various budget buyers, people who had a definite amount of money to spend?

The Witness: This would not be directed to any particular income group, because, if we look at the magazines in which it appeared, it covers the field. I mean, we go from the Progressive Farmer into Farm Journal and Successful Farming, True Story, Parents. I am sure the circulation of these [fol. 1410] magazines is slightly different from Look and Life and Ladies' Home Journal.

The Court: It used to be. I wouldn't testify to it today. I think you will find Life in many a farmhouse.

The Witness: Oh, I am sure of that.

The Court: And Look, today.

The Witness: Yes.

The Court: Is the most expensive machine this large one, the 401?

The Witness: Yes.

The Court: And that has almost half of the advertisement, the most expensive machine?

The Witness: Yes, yes.

The Court: That was the lead item, the lead price.
The Witness: Yes. That is commercial advertising.

By Mr. Weinstein:

Q. Is it not true that your 404 machine sells for approximately $189.50 or $190?
A. It is within that range. I would not want to be held to accurate pricing.

Mr. Klots: Did counsel say the 404 was a manual machine?
[fol. 1411] Mr. Weinstein: A straight stitch machine. I am sorry.
Mr. Klots: With a zigzag attachment.
Mr. Weinstein: Yes.

By Mr. Weinstein:

Q. Then, if the 403 sells for approximately $280, the purchaser of the 403 machine is willing to spend at least $90 more for the feature of being able to just replace the cams in the machine as opposed to using this zigzag attachment on the 404; is that not true?
A. Yes.
Q. And if he buys the 401, he is willing to spend $150 more as opposed to the 404 for that convenience of being able to merely dial a stitch?
A. There is a mathematical stepup. I am not going along with your computations.

The Court: Commercial marketing doesn't bear out the statement, from practical experience.
Mr. Weinstein: Your Honor, we merely wish to show——
The Court: It sometimes depends on the shop in which it is sold. A woman may go into a shop on 57th Street and ofttimes pay three times what she would pay for the same [fol. 1412] garment up in a store on the Concourse, called Alexanders, without the label.

Q. If a person comes in the Singer shop, can she not look at the 401, the 403 and the 404 at the same time and compare them feature for feature?
A. She can, if she so wishes.

Q. And will not the sales personnel help her to compare them feature for feature?

A. Oh, yes.

Q. So that, if a woman makes that choice——

A. If she makes that choice, we are glad to give her the opportunity.

Q. There are a number of people who come into Singer shops who want only a straight stitch machine; is that not true?

Mr. Klots: I am sorry. May I have the question? I did not hear it.

The Court: There are a number of people who come into Singer shops who only want straight stitch machines; is that not so?

A. Women do not specify exactly what they want when they come in.

Q. Didn't you testify on direct examination that 90 per cent of the use of a sewing machine is directed to straight [fol. 1413] stitching?

A. Absolutely.

Q. So, is it not fair to assume, and from your experience can you not assume, that some women buy machines solely for straight stitching?

A. Yes.

Q. Do you sell a straight stitch machine which does not have a zigzag attachment?

A. Yes.

Q. So, certainly, those women at least do not care about zigzag patterns.

A. There is a difference in what they buy and what they ask for, however. Women are inquisitive. They like to see more than a single selection.

Q. So they generally scan the whole panorama of machines that you have?

A. They allow us to demonstrate.

Q. And you do so demonstrate?

A. Yes.

Q. There are some women, are there not, who wish the replaceable cam machine and do not wish to spend the additional money to get the 401 machine? When I speak of the replaceable cam, I speak of the 403 machine.

A. This is very difficult for me to follow in that women [fol. 1414] are not conscious of the mechanics. They are conscious of the application. They want the machine that does things. They don't care how they get around doing it. They don't understand the mechanism.

Q. Are they not conscious of the operational differences between these two machines?

A. They are aware—if a woman is shopping and looking at both machines, she certainly is aware that you dial or the difference between dialing and removing a cam.

Q. Isn't that the sole basis upon which you can expect a woman to pay $60 more for a machine?

A. No, it is not.

Q. What other bases are there?

A. Because some people think this is easier.

Q. Some people think this is easier?

A. Yes.

Q. Do some people think that the 401 is easier?

A. Yes.

Q. So there are certain people who buy the 401 machine because they are interested in having the feature of ease, is that not true?

A. They interpret that feature as being easy for them.

[fol. 1415] Q. Do you not so advertise it as being easiest?

A. Yes.

Q. It has been stipulated, Miss Hutton, that in 1959 155,000-some odd purchasers purchased the 401 machine and 50,000-some odd purchasers purchased the 403 machine.

A. In what year?

Q. 1959.

Mr. Klots: May we have the paragraph of the stipulation?

Mr. Weinstein: That is paragraph 88, Mr. Klots.

Q. Don't you think it is fair to assume that when approximately three times as many women spend $60 more to buy what you advertise to be the most fully automatic machine that they are buying it conscious of the fact that they are getting one principal feature, the feature of ease of dialing the stitch?

A. Volume of sales is dependent very closely on the amount of promotion and how machines are promoted.

Q. Didn't you say the price was a substantial factor?

A. Is a substantial factor.

Q. Here we have a situation, do we not, where many, many [fol. 1416] more women are paying more money to buy the 401 machine? You attribute this solely to advertising? Is that what you wish us to believe?

A. I said promotion, which is much more than advertising. It is a matter of demonstration, with a personal demonstration to the consumer, the selling efforts in total.

Q. Then you are in fact able to demonstrate to the consumer that this is an easier machine to use, are you not?

A. I don't follow you. I am sorry.

Q. You say it is a matter of demonstration of the machine in order to cause a hundred thousand people——

A. I did not say that. I said the volume of sales——

The Court: Why don't you break up the question. Sales psychology—I don't think this lady, as smart as she is, is qualified as an expert in that, and may I suggest that I don't think you are either, nor am I, although I may, with my conceit, think I am.

Mr. Weinstein: I was just suggesting, your Honor, that it was a natural inference, knowing women to be careful shoppers, as I do.

The Court: It is not a natural inference. Common experi- [fol. 1417] ence tells us that P. T. Barnum could make a fortune selling the Brooklyn Bridge. That is salesmanship, promotion.

Mr. Weinstein: Your Honor, I doubt that P. T. Barnum ever had the opportunity of demonstrating three bridges simultaneously and causing someone to make a conscious choice.

The Court: He had an awful lot of opportunities, including presenting opera singers.

By Mr. Weinstein:

Q. May I conclude the subject, Miss Hutton, by saying: You do agree that the 401 machine sells for $60 more than the 403 machine, do you not?

The Court: Whether she agrees with that or not, it is so stipulated. There is no dispute about that.

Q. You do agree that the 401 and the 403 differ only in that they have different cam mechanisms.

A. Yes.

Q. Just one further point. Can a consumer, owning a 401 machine, use it without ever replacing a cam, if he so chooses, and get numerous patterns, many in excess of one or two or three?

A. Yes.

Q. In other words, if that machine comes with seven metal [fol. 1418] cams and one fashion disc on top of those metal cams, she can leave that disc in there and never touch it and get at least, did you testify, 22 patterns?

A. Yes, and that is especially true if she limits her sewing to the functional zigzag sewing.

Q. And how many discs would she have to put in and out of the 403 machine in order to get 22 patterns?

A. To get 22 patterns?

Q. Yes.

A. 22 discs.

Q. How many discs come with the machine?

A. There is one on it, eight with it, and they total 22.

Q. If she purchases extra discs, is that not correct?

A. Yes.

Q. So there is one on it and eight with it, so she only gets nine?

A. Yes.

Q. So, if a woman buys the machine as it comes with standard equipment, she can only make nine patterns on it and then only by replacing the discs each time?

A. Yes.

[fol. 1419] Q. I show you this. Can you identify it?

A. Yes.

Q. What is it?

A. A 401 instruction book included in the attachments sent with the 401 machine.

Mr. Weinstein: I offer it in evidence, your Honor.

Mr. Klots: No objection.

The Court: Received in evidence.

(Received in evidence as Government's Exhibit 201.)

Mr. Weinstein: Do you know whether or not the instruction book for the 403 machine is in evidence?

Mr. Klots: One of them is. I don't know which.

(Discussion off the record.)

By Mr. Weinstein:

Q. I show you Defendant's Exhibit 139 and Government's Exhibit 201, which are, respectively, the instruction books going with the 403 machine and the 401 machine, Singer's. Would you examine them and tell me whether or not they are identical in most respects except as to those areas covering the cam mechanism?

[fol. 1420] A. I don't have to examine them. They are.

Q. Thank you. Let me direct your attention to the 401 book, which is Government's Exhibit 201, and ask you to examine pages A through P.

A. That is the color section.

Q. What do these pages relate to?

A. They relate to different things. Page A relates to two needle stitching.

Q. And page B?

A. Page B relates to two needle stitching, as does C. D relates to borders that are made from combinations of various stitches. F, G, H, I and J relate to motifs made by using a variety of different stitches. Some are monograms and some are designs. L, M and N are applique. I skipped K. K is a freehand embroidery.

Q. I don't think you have to go any further. Can all of these things be done with the 401 machine?

A. It is in the 401 book. Yes.

Q. Can every one of these things be done with the 403 machine?

A. I will have to check it. Anything on A, B, C, D and E could be done, providing there is a cam——

The Court: In fact, the plates that you have just desig-

[fol. 1421] nated, the pictorial plates, are the same.

The Witness: I have the 401 and you have the 401. We don't have any color section in the 403.

The Court: You just have the black and white stitching.

The Witness: Yes. There are certain of these patterns that a cam has not been made for the 403 to duplicate its stitching. A cam could be made for any of these stitchings.

By Mr. Weinstein:

Q. Do some of these stitchings become possible because you combine the action from two cams simultaneously?

A. Yes.

Q. That feature is only found in the 401 machine, is that not true, as opposed to the 403 and the 404 machines?

A. Yes. But, where that particular stitch becomes important to the consumer, a cam could be made.

Q. Is everything that you can get by combining cams with the 401 machine presently available to the purchaser of a 403 machine?

A. No, it is not.

Q. How about the purchaser of a 404 machine?

[fol. 1422] A. No.

Q. Looking at these pages, wouldn't you say that some of these that you can accomplish with the 401 machine are amazing?

A. No, they are not amazing.

Q. Not amazing? You don't think it has any degree of spectacularness to it?

The Court: Not to one as experienced as she. This lady is experienced. What would be amazing to you or to me is no longer amazing to her because the novelty has been worn off by the dullness of business and commercial activities.

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Q. Did you say that you helped Mr. Johnson develop the 401 machine?

A. I did not say I helped him, because I am not an engineer. I said he consulted with me.

Q. On what matters did he consult you about? Can you give us some examples?

[fol. 1423] A. Matters of customer usage and application of the mechanical to the general field of home sewing, which, again, is usage.

Q. Do you remember approximately when he consulted you?

A. Well, I started working with Mr. Johnson in about 1951 or 1952, and it was almost immediately after I started working with him that the 401, which was known as the 282 at the time, was being developed.

Q. The 403 machine. Were you consulted concerning the development of that machine?

A. Yes.

Q. And the 404 machine. Were you consulted concerning the development of that machine?

A. Yes. However, the other two to a lesser degree because the concept had been established.

Q. Were any specific suggestions that you made to Mr. Johnson incorporated in the 401 machine?

A. Oh, yes.

Q. Can you name a few of them?

The Court: What is the purpose of this? Do you attack the validity of the patent as not being Johnson's invention?

Mr. Weinstein: No, your Honor. We just wish to show [fol. 1424] that Miss Hutton has a connection with what the consumer wants and that, if these features go into a machine, they are probably there because people in Singer considered them important, and I think this applies fully well to the cam mechanisms.

The Court: I suppose Johnson considered the practical applicability of anything he wanted to put into operation and apply in his device. Frequently in development this happens.

Mr. Weinstein: I am willing to drop that line of questioning.

The Court: All right.

By Mr. Weinstein:

Q. When did you first see the Necchi machine you described this morning?

A. Do you mean this particular machine or a Necchi Supernova machine?

Q. A machine that is, although not the same, identical in features to the one you testified about this morning.

A. It would be very hard for me to fix a date. I saw them shortly after they were sold on our U.S. market.

Q. You cannot fix that date?

A. I cannot fix the date, no. I don't remember that, be- [fol. 1424a] cause I go to Necchi stores occasionally. It must go back four years at least.

[fol. 1425] Q. I direct your attention to Defendant's Exhibit 149 in evidence, a Vigorelli machine, and ask you when you first saw this machine.

A. I first saw the Vigorelli machine quite some months ago.

Q. Can you fix the date for us approximately?

A. I could fix it if I have an opportunity to refer to some correspondence.

I do not have it here. It is very hard for me to remember the date unless I see something.

Q. Do you remember the subject matter of the correspondence? Did you write a letter——

A. I think I wrote a report on this machine at one time.

Q. What was the purpose of the report? Were you shopping a competitor's machine?

A. No. The purpose of the report was to—it is in line with what we do frequently. We are given competitive machines and asked to evaluate them in terms of customer usage and customer acceptance. We do exactly the same with our own sewing machines.

Q. In other words, you were trying to determine how competitive this machine was with the Singer machine?

A. Yes.

[fol. 1426] Q. At the time that you wrote that report?

A. How competitive it would be, how great an interest it would be to the consumer, which I presume could be interpreted as being competitive.

Q. This Vigorelli machine also controls the feed of the cloth through the machine, does it not, in addition to its other features?

A. You mean by cam?

Q. By cam, yes.

A. Yes.

Q. How many Vigorelli machines have you seen in this country that perform that function, I mean other than this particular style? I don't mean have you seen a dozen of these machines; I mean have you seen other designs of a Vigorelli machine that perform that same function?

A. I don't believe I have.

Q. So to the best of your——

A. I can't recall if I have.

Q. So to the best of your recollection this is the only Vigorelli machine you have seen that has cam means for controlling the feed?

A. Yes.

Q. Did you ever see a prototype of this machine?

[fol. 1427] Mr. Klots: What do you mean by prototype?

Mr. Weinstein: Perhaps a model with not all the casing elements on it.

Mr. Klots: Made by Vigorelli, you mean?

Mr. Weinstein: Yes.

A. I saw a machine of this type that looked very much the same as this. The only difference I can recall is in the cams themselves. I believe they were of a brownish color and these are definitely molded and are black. Whether it was a prototype or not, I don't know.

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[fol. 1428] IN UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA

vs.

THE SINGER MANUFACTURING CO.

New York, June 2, 1961, 1.30 o'clock p.m.

Trial resumed

OFFERS OF PROOF

Mr. Pettit: Your Honor, I have a witness whose testimony will take approximately five minutes, and I would like to put him on the stand now because he will be leaving today for a two-week sailing trip.

The Court: Do you have any objection, Mr. Elkins?

Mr. Elkins: Who is the witness and what will he be testifying about?

(Discussion off the record.)

Mr. Elkins: If your Honor please, the subject of the testimony as set forth in the instrument which opposing counsel has shown me has to do with the hourly wages in Japan of employees working in Japan in a plant which is, I believe, partly owned by Singer. It is completely irrelevant. I suggest that the man go on his sailing trip without taking the five minutes to testify. I cannot possibly conceive of any relevancy——

The Court: If he is only going to testify for five minutes, [fol. 1429] let's have his testimony on the record. I agree

with you that it is irrelevant and immaterial and I will strike it from the record, but I would like it in the record in case somebody else might differ with me.

I don't see how it is at all material how much workmen get. If you want to put in an offer of proof, I will permit you to do it if there is no objection by counsel, and then on his motion I will strike it and exclude it.

I think that would be the better way. Do you agree, Mr. Elkins?

Mr. Elkins: This is an offer of proof, and I would gather, then, that it will not be in evidence?

The Court: No, it is not in evidence.

Mr. Elkins: It will be excluded as evidence, as I understand it?

The Court: Yes. I will not take it, but I want Mr. Pettit to have the opportunity of placing this in the record in some way. This perhaps seems to be the best and the quickest way. All right.

Mr. Pettit: Your Honor, I just wanted to add that I had intended to supplement this with similar wage rates in the United States.

[fol. 1430] The Court: Suppose we start first with this offer of proof.

Mr. Pettit: I will offer——

The Court: You offer to call a witness.

Mr. Pettit: —to call a witness, Robert S. Peets, Administrator of Far East factories of The Singer Manufacturing Company, to testify that the average straight time hourly earnings as of March 1961 and the average hourly fringe benefit cost for the period April 1960 through March 1961 inclusive of all employees of the Pine Sewing Machine Manufacturing Company at its factory in Utsonomiya, Japan, excluding clerical, engineering and supervisory personnel, is as follows, respectively:

Average hourly earnings	$.262
Average hourly fringe benefit cost	$.207
Total per hour	$.469

The Court: That is $4 a day, inclusive.

Mr. Pettit: Well, yes, when you put the point in front of it you have said dollars. But it is .469, is the total, and it is

all embodied in this statement that I would propose to introduce.

The Court: No, I don't want the statement.

[fol. 1431] You offer to prove this by this witness, Mr. Peets.

Mr. Pettit: Yes.

The Court: And the Government objects to it on the ground of it being irrelevant, immaterial and in no way involved in this suit.

Mr. Elkins: That's right, your Honor.

The Court: Your offer of proof is stated on the record. I refuse to accept this proof. I agree with the government that it is irrelevant and immaterial. You have an exception to my ruling.

Mr. Pettit: Thank you, sir.

Now I would like to do the same thing with another offer of proof. I would like to offer to prove by Mr. John Q. Jennings, who is in the Labor Relations Department of The Singer Manufacturing Company, that the average straight time hourly earnings as of December 1960 and the average hourly fringe benefit costs for the year 1960 of all Singer employees at its factory in Elizabethport, New Jersey, excluding in each instance apprentices, learners, clerks, engineers and supervisory personnel, are as follows, respectively:

[fol. 1432]

Average hourly earnings	$2.561
Average fringe benefit cost	.867
Total per hour	$3.428

The Court: The government objects to it?

Mr. Elkins: We object for the same reason.

The Court: To this specific evidence?

Mr. Elkins: Yes.

The Court: You object on the ground it is irrelevant and immaterial?

Mr. Elkins: That's right, your Honor.

The Court: I agree with the government.

I refuse to accept this proof, and I don't think it is material or relevant to the issues that are presented by this suit, and you have an exception to my ruling.

Mr. Pettit: I offered it on the thought that it relates to the reasonableness of the conduct in what Singer is doing to meet the competition that it has, and it shows the fight that it is in, what it has to do to protect itself.

The Court: I suppose that in many fields of business activities an American manufacturer, an American businessman, is confronted with similar and identical problems. That, however, is not involved in this case.

[fol. 1433] Mr. Pettit: Unless it is involved in the element of reasonableness in acquiring the patent. We have a very peculiar situation here.

The Court: The acquisition of the patent is not attacked on the basis of its reasonableness. It is attacked on the basis of its unlawful acquisition, that it was acquired for an unlawful purpose.

As I understand the government's contention, it is in substance that although an American manufacturer may acquire another patent from another owner, that is a lawful act; still, a lawful act may not be used to accomplish an unlawful purpose. It is the purpose of the acquisition that the government attacks in this suit.

Do I correctly, in substance, state the government's position?

[fol. 1434] Mr. Elkins: Yes, your Honor.

Mr. Pettit: Then I understand they are not claiming that the acquisition is unreasonable—on the grounds of unreasonableness.

The Court: That is a little too broad, because "unreasonableness" is a term of art which perhaps might not be correctly understood. The theory of the government's case is that the law was violated with respect to the acquisition of these patents in that the acquisition was an act done for the accomplishment of an unlawful purpose. You may have a violation of the law, as I pointed out to you, I think, early in the trial, from the commission of a lawful act if it is done in pursuance of an unlawful purpose or unlawful conspiracy. That in itself would make the act, even though innocent of itself, and lawful of itself, a violation of the law because of the purpose.

Mr. Pettit: All right, I hope that that is their position, then.

The Court: I think Mr. Elkins has stated that only three minutes ago—and if there is any doubt remaining in your mind, I have no doubt that he will state his again.

[fol. 1435] Will you accommodate Mr. Pettit?

Mr. Elkins: Yes, your Honor. We allege that there was a conspiracy between Singer and Gegauf; that the principal phase of that conspiracy was that Singer would acquire from Gegauf Gegauf's United States patent applications; that the purpose of the conspiracy was that those patents when ultimately issued would be used by Singer in conjunction with its own patents in order to exclude the Japanese.

We also allege that Singer in acquiring the two Gegauf United States patent applications did so in an attempt to monopolize trade and commerce in the United States in the built-in machine carried multi-cam machines.

I make it thorough, your Honor, because I do not want opposing counsel to have any misunderstanding.

The Court: You make it thorough but not explicit enough.

You do not attack the acquisition of these patents standing in and of themselves as being an unlawful act per se, as I understand the government's position. You say that they become unlawful and the acquisitions become unlawful because of the purpose for which they were acquired.

[fol. 1436] Mr. Elkins: That is so, your Honor.

The Court: All right, then we will proceed.

Mr. Elkins: I wonder if I could answer it this way, if I say that the acquisition of a patent in and of itself is a normal, ordinary procedure. We say because of the circumstances and the purposes and the intent of the parties here it was unlawful.

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JESSIE HUTTON resumed.

Cross-examination continued.

By Mr. Weinstein:

Q. Miss Hutton, I want to clear up just a few ambiguities that appeared in your testimony yesterday.

You testified yesterday that to the best of your recollec-

tion, or your estimate was that 90 per cent of sewing was straight stitch sewing, is that correct?

A. It is not. I prefer to have my original testimony read back.

Mr. Klots: I have it right here (indicating).

A. (Continuing) I don't mean yesterday. I mean the original, where I testified 90 per cent was.

[fol. 1437] The Court: She said that 90 per cent of the women or purchasers of the machine were interested primarily in straight stitch sewing.

Mr. Klots: Page 1326.

Q. Did you testify yesterday from your memory, Miss Hutton?

The Court: The witness did not have any papers before her, so it must have been memory. I observed as she testified that there were no documents before her which she used to refresh her recollection, as she testified.

Q. How would you answer this question:

"Q. Now to what extent does the ornamental zigzag stitch play a role in the fabricating of cloth by American house wives?"

A. I answered that once before in the original testimony, and that is what I asked to have read back.

Q. And the answer you gave at that time was "It is a very small percentage. In fact, we base our judgments on 90 per cent of all home sewing is straight stitching."

A. Right.

Q. Is this still your answer?

A. We base our judgments on that.

[fol. 1438] Q. Yes.

A. And these judgments refer back to the judgments that we were sharing with the engineers, as I recall.

* * * * * * *

Q. Your answer to the next question was: "The amount [fol. 1439] remaining, 10 per cent, is zigzagging and of that, 5 per cent is decorative."

A. I meant half of that—5 percent of the whole—not half of the 10 per cent.

Q. That is all I want to know. You distinguished yesterday between the two terms "ease" and "effectiveness" when describing the production of stitches on the Singer machines.

Would you define what you mean by "equal ease" and "equal effectiveness"?

A. My use of the term "ease" relates to the customer, the user. I mean it is easy for her to do. It is easy for her to remember. It is easy for her to accomplish.

"Effectiveness" I used in terms of relating to when the stitch was done, is it effective in the garment, in the operation, in use.

Q. Does "ease" relate more to the person using the machine, and "effectiveness" relate to the machine?

A. No, the effectiveness relates to the stitch in the fabric.

The Court: The result.

The Witness: Yes.

The Court: By "effectiveness" you mean the net result of [fol. 1440] the operation?

The Witness: Yes.

The Court: And by "ease" do you mean the facility with which the result could be produced by the operator on a given machine?

The Witness: Yes.

Q. I put before you, Miss Hutton, Defendant's Exhibit 143, which are the stitches which were made on the Pfaff 259 manual zigzag machine; Exhibit 106-C, which was made on the 401 multi-cam machine; Exhibit 116-C, the zigzag stitches which were made on the 403 replaceable cam machine, and Exhibit 141-C, which were the zigzag stitches made on the 404 straight stitch machine with the zigzag attachment.

I ask you to examine them and tell me whether or not the stitches on each of these correspond with the stitches on the other three or are intended to correspond?

A. They are intended to correspond for practical purposes. They are not intended to correspond in the respect that they would be used on the same garment and would be viewed to be absoluteely impossible to interpret any difference.

The same thing is true of the lines of stitching made on [fol. 1441] two different sewing machines of the same class, and with entirely the same facility because you have tension setting, you have many things that are not related to some of the essentials that we are discussing today. In fact, we use the terminology "each machine has its own personality". That means each individual machine.

The Court: By that you mean——

The Witness: I mean, if you carry that to its extreme.

The Court: That the construction of the machine itself, the mechanism will produce some minor variations in work product.

The Witness: Yes.

The Court: Because the personality of the operator——

The Witness: That is right.

The Court: —will produce some variation.

The Witness: Humidity will, too.

The Court: Humidity affects the cloth?

The Witness: Yes, if you are carrying this to the ultimate.

[fol. 1442] Q. My question was, when you made these stitches did you intend that as closely as possible the lines of one should correspond to the lines of the other three?

A. Yes.

Q. Do you agree with this statement: that to be entirely successful in operating a straight stitch machine with a zigzag attachment, the housewife had to have a sort of built-in timer so that she would zig when she was supposed to and zag when she was supposed to to keep the pattern uniform?

A. No, there is no—this is with the zigzag attachment?

Q. That's right.

A. The only thing the operator could do that would interfere with the conformation of the stitch would be to hold her material too tightly, to place a drag on it, to interrupt the feeding of the fabric.

Q. Would that statement be true as to the manual zigzag machine?

A. It is true only in the fabric-shifting device in that particular context, which would make it true only of a zigzag attachment.

Q. I do not think you have answered my question. My question is this: Do you say—and I am using loose term-[fol. 1443] inology—that in order for a housewife using a manual zigzag machine to perform ornamental zigzag stitching, she has to have a built-in timer and zig when she is supposed to and zag when she is supposed to? In other words, that she has to count to herself where the timing is very crucial in her producing stitches.

A. The timing would best be regulated in harmony with the speed of the machine.

Q. Do you agree with the statement: that to be entirely successful she has to have a built-in timer so that she would zig when she was supposed to and zag when she was supposed to, to keep the pattern uniform?

A. That in reference to a——

Q. Manual machine.

A. —manual zigzag machine?

Q. Yes.

A. It depends entirely on what you mean by zigging and zagging, because if you can interpret motion of levers as zigging and zagging, that statement is correct.

Q. You think that statement is correct, giving it that interpretation—the interpretation you just placed upon it?

A. I think it is a little bit harsh to say she would have to have a built-in timer. I think the idea—the attempt is to [fol. 1444] convey an idea that there must be—the motion must be synchronized—the motion of the movement of levers must be synchronized. I think the built-in timer phrase is a colloquialism that you interpret in meaning as you will.

Q. Isn't it a pretty close approximation to the truth, though?

A. No, I wouldn't say so.

Q. You wouldn't say so?

A. There again you are getting into ability, and you are getting into the customer interest and desire, and what she personally can do.

Q. I am concerned with the average housewife using a manual zigzag sewing machine. Doesn't she have some problem that she does not have when she uses——

A. Oh, absolutely.

Q. —when she uses a multi-cam machine, for instance, with built-in cams?

A. Yes.

Q. Let me direct your attention to Defendant's Exhibit 143, the design made on the Pfaff manual machine. Let me ask you to examine the second line from the bottom and tell me whether or not that blind stitch has its peaks uniform throughout.

[fol. 1445] A. Yes.

Q. It does?

A. Pretty—well, do you mean uniformly spaced or——

Q. Uniform in height.

A. In height there is a variation.

Q. How many of those peaks would you say—and to your eye can be seen as not to be the same height as the majority of them? Would you count them for me?

A. There is one (indicating); there is one slightly—five, I would say.

Q. Five. How many peaks are there altogether in that line? Would you mind counting them for me.

A. Thirty-five and a half.

Q. So out of thirty-five and a half, at least five, to your eye, are not identical with the majority of the stitches?

A. Yes.

Q. Now I direct your attention to Exhibit 106C, the pattern made on the 401 machine. Looking at that same comparable line of stitches, the second from the bottom, how many of those would you say are not of the same height as the majority?

A. They are all the same height.

[fol. 1446] Q. All the same height?

A. Yes.

Q. And there are approximately the same number of stitches on that line as there are in Exhibit 143?

A. Approximately, yes.

Q. Looking at Exhibit 116C, again directing your attention to the second line from the bottom of the blind stitches, how many of those stitches are not of the same height?

A. They are all of the same height.

Q. All of the same height?

A. Yes.

Q. And again are there approximately the same number of stitches on that line as on the other two exhibits?

A. Yes.

Q. Directing your attention to Exhibit 141C, again the second line from the bottom, does that line look similar to the three other lines in the sense that each has a triangular point?

A. Yes.

Q. It does. You say that you can see no difference between these——

A. I did not say that. I said it looked similar.

[fol. 1447] Q. Looked similar.

A. I can give you the reason why it was designed like that.

Q. Please answer my question.

A. It is similar. It is similar in function. It is similar in use. It is not similar when used decorative because it appears more as a scallop.

Q. And these appear more as a triangular?

A. Yes, but this is a functional stitch.

Q. Is not a blind stitch a functional stitch?

A. All stitches we are talking about are blind stitches.

The Court: What do you mean by a blind stitch?

The Witness: Its major usage is for blind stitch hems, where the stitch does not go through, as we normally think of a sewing machine lock stitch does—trailing a thread on one side and on the other—this knits the fold of the garment on the hemline, so it gives the appearance of a hem stitch.

The Court: It is not a continuous straight line machine stitch?

The Witness: Yes. Since it——

The Court: Sort of imitation hand stitching that you see [fol. 1448] on the hem of many garments?

The Witness: That is right—the speed with which it is done is the greatest asset.

The Court: Is it also the design appearance that you prefer to see this broken line of stitches?

The Witness: Yes, when related to the simple lock stitch machine—the appearance of a blind stitch hem is better related to the hand hemming, which is not as good.

The Court: It is not as good as hand hemming?

The Witness: No.

The Court: But it gives a better appearance to many women?

The Witness: Than a machine one.

The Court: To men, too.

Q. Am I correct in saying that with the Singer attachment for this straight stitch machine you cannot achieve the triangular line stitch similar to the ones you got on the 401, the 403 and on the Pfaff 259 machine?

A. We maintain this is similar. If you want an exact—we do not make a cam for that exact stitch. We could make a cam for that exact stitch. This is no reason why there could not be a cam, but we chose to make the cam with the radius for reasons of application, use and operation.

[fol. 1449] Q. You mean when a woman has a straight stitch machine with a zigzag attachment, she uses it for different purposes than a woman that has a 403 machine or a 401 machine?

A. If you will permit me to explain I will clarify it.

Q. Please do.

A. We know that the zigzag attachment is a fabric shifting attachment.

Q. Yes.

A. Therefore the requirements under which the material are handled are a bit different than on the machine where the needle swings. For the blind stitch function, testing proved that a stitch with the conformity of the rounded edge worked more efficiently than one with the squared off blind stitching. This is the blind stitch for the zigzag attachment. This functions well.

Q. Is it not true, then, that when you are using a straight stitch machine with a zigzag attachment, there is a limitation in that the usua. blind stitch machine found on the other Singer zigzag machines is not as efficient when used with a zigzag attachment? Is that question clear to you?

[fol. 1450] A. No.

The Court: I cannot understand it. Suppose you break it up and make it shorter.

Q. You use a pointed stitch on the 401 and the 403, a triangular point.

You use a scallop on the 404 when you use a zigzag attachment, and you say that tests prove that this triangular stitch was not as efficient when used with a zigzag attachment. Is that true?

A. I said it was not as efficient as the stitch with the rounded contour.

Q. So that you have a different requirement when you are using a straight stitch machine with a zigzag attachment than when you are using a multi-cam machine; is that not true?

A. May I ask, in what respect?

Q. In that the stitches that prove efficient and useful in the 403 or the 401 do not prove as efficient or as useful in the 404?

A. I don't think I understand—I don't think our minds are meeting because I have stated this, the blind stitch, as shown here with the rounded edge, was designed thusly to make it efficient in blind stitch, to make the attachment on a [fol. 1451] straight stitch machine efficient in blind stitching. The purpose of this stitch all the way through is functional; primarily blind stitching.

This is not a stitch that is seen when the garment is worn —even when the stitch is used as a seam finish, it is not seen on the outward garment.

It is my opinion that the customer couldn't care less whether it is exactly the same stitch that was going into the garment, since the stitch loses its identity in use.

Q. What I want to know is, isn't there something unique, special about a zigzag attachment when used with a straight stitch machine which required Singer to run tests and come up with a new cam to perform a new function?

A. If you are referring to the fabric shifting uniqueness of it, yes.

Q. Is that your——

A. Yes.

Q. In other words, the fact that the fabric shifts as opposed to the needle shifting——

A. Yes.

Q. —causes the necessity for using a different cam to get as efficient a blind stitch?

[fol. 1452] A. Yes.

The Court: But if you do use that different cam, do you get the same or substantially the same stitch?

The Witness: Yes, yes, in function all the way through.

Q. You mentioned yesterday that there were limitations in Singer's 401, 403 and 404 machine with respect to using the zigzag attachment on different materials.

You said they all had limitations, although they were different limitations; am I correct?

A. I said all sewing machines have limitations—zigzag machines have limitations; attachments on straight stitch machines have limitations.

Q. Limitations unto themselves?

A. Yes, yes.

Q. Thank you. You testified yesterday that to the best of your knowledge every straight stitch sewing machine on the American market will take a zigzag attachment; is that correct—to the best of your recollection?

A. I think it was straight stitch machines sold today, was it not?

[fol. 1453] Q. Yes.

A. And we implied new sewing machines.

Q. I did not hear you.

A. We implied new sewing machines obviously.

Q. Yes; is that correct?

A. Yes, yes.

Q. Have you taken a survey of straight stitch sewing machines? How many straight stitch sewing machines have you purchased or used?

A. I have purchased none.

Q. None. Have you used every straight stitch sewing machine on the market?

A. No, I do not pretend to. My time is too valuable.

Q. Have you seen every straight stitch sewing machine on the market?

A. No.

Q. Do you know of your own knowledge that every straight stitch sewing machine on the American market will take a zigzag attachment?

A. I know from my knowledge on this basis, there are essentially a limited number of kinds of stitch-forming mechanisms and of presser feed and presser bar situations

—feed situations. Even though there are many manufac-
[fol. 1454] turers, many name machines, they all fall into a fairly narrow field of categories. This is what I base my judgment on, in addition to those I have been exposed to.

Q. Are you guessing, then, that these machines all have zigzag attachments?

A. No, I am not guessing. I feel it is a qualified judgment related to my exposure to the public as well as to the market.

Q. Are you saying then that it is merely logical that they would all have zigzag attachments?

A. Yes, it is.

Q. But do you know from your own knowledge——

A. Attachments available. There are many attachments sold on the market that do zigzagging, and zigzag attachments are not new to the American public. Zigzag attachments existed before I started in the sewing machine business, which is 25 years ago.

Q. Are you then saying that zigzag attachments are——

A. A normal attachment to be supplied with straight stitch sewing machines, not always given free, but available separately, of one type or another.

Q. Do you know of your own knowledge whether or not
[fol. 1455] every manufacturer of straight stitch sewing machines supplies, as standard equipment with his machine, a zigzag attachment?

A. I do not know of my own knowledge.

Q. Do you know what percentage do?

A. No.

The Court: Do you know, even if he doesn't supply it with the straight stitch machine, whether or not there is available in the market an attachment which will permit the straight stitch machine to be used for zigzag sewing purposes.

The Witness: That is what I intended to testify in relationship to.

Q. In other words, you are testifying that a consumer can go into the market, buy a zigzag attachment, and probably attach it to many straight stitch machines, is that correct?

A. Yes, and there are a number of zigzag attachments to choose from of foreign manufacture as well as U.S. manufacture.

Q. Do those zigzag attachments vary in price, do you know?

A. They vary in price; they vary in feature.

Q. Do they vary in quality?

[fol. 1456] A. I would presume so, yes.

Q. Is it likely that some of them, to the extent that they were, are not very good? Do you know of some that are not very good? Let me change the question to that.

The Court: Loyalty to her company would compel her to say yes, that Singer is the best.

Mr. Weinstein: Your Honor, we are only interested in the facts, and I am sure Miss Hutton only wants to give us the facts.

The Court: Well, I am sure she does, but her natural inclination would be one of loyalty, I would take it.

Mr. Weinstein: I hope that loyalty, your Honor, does not interfere with her testimony.

The Court: Well, I don't think it does. She has not given any evidence of that. I think she has been very cooperative here and very frank. At least she gives me that impression. I am sure that you get the same impression, too.

A. May I have the question again?

Mr. Weinstein: Please read the question.

The Court: Some of these attachments don't stand up on wear as well as others?

[fol. 1457] The Witness: There is no doubt about that.

Mr. Klots: May I have the question by the Court and the answer?

(Record read.)

By Mr. Weinstein:

Q. Was the same attachment designed to go with the 404 machine specifically?

A. To my best recollection, no. It preceded the 404 machine.

Q. Does Singer sell these attachments separately, do you know?

A. Yes.

Q. If I wanted to buy a 404 machine, could I buy one without getting that attachment?

A. Not today, you couldn't.

Q. Not today. It is standard equipment?

A. It is standard equipment. But this same attachment also fits on the 301 machine which was sold in great quantity prior to——

Q. When did this become standard equipment, do you know?

A. I cannot tell you that accurately.

Q. Can you give me a year?

A. I don't believe I could do that. It is quite some time. [fol. 1458] It is more than a year, I am sure.

Q. Do you know whether it was prior to 1956?

A. Prior to 1956?

Q. Yes.

A. With the 404?

Q. Well, the 404 came out first in 1958, is that correct?

A. I believe so.

Q. And you say this came out subsequently?

A. No, prior to it.

Q. Prior to the 404.

A. With the 301.

Q. Are there zigzag attachments, to your knowledge, that are inferior to these Singer zigzag attachments, from the point of view of operation, result?

A. If you would ask have there been, I should say yes. Are there? I haven't tested zigzag attachments within the last six months anyway.

Q. You don't know what the present situation is with respect to zigzag attachments.

A. Not within the last six months.

Q. Six months ago what was your experience with zigzag attachments?

A. There are zigzag attachments of several designs. We [fol. 1459] feel we have a very fine zigzag attachment that has many points of superiority.

Q. What is the danger in having a poorly designed or inferior zigzag attachment?

A. What is the danger?

Q. Yes.

A. You mean to the company?

Q. What might go wrong in using it? Why does Singer consider its attachment very fine?

A. Because it is functional.

Q. I am sorry?

A. Because it is functional.

Q. Will you explain what you mean by "because it is functional"?

A. It operates dependably.

Q. Are there some that are not functional, that do not operate dependably?

A. Quality of manufacture is important with any manufacturing concern, and I think the old adage goes along: You can always make a cheaper one that works worse.

Q. Isn't it true that an attachment or an accessory specifically designed to go with a particular machine is much [fol. 1460] more likely to give good results than one produced to fit any machine?

The Court: That is not so. We know from common knowledge that that is not so. It is supposed to, but it doesn't always work.

Q. Does Singer sell its own brand needles?

A. Yes.

Q. Are they better needles, in your opinion, than other needles, as far as replacing Singer broken needles is concerned?

A. I think this requires some explanation by me.

The Court: I think you are getting into a Federal Trade Commission hearing.

Mr. Weinstein: No, your Honor. We are merely trying to show that Miss Hutton does not know whether or not every machine on the market has a zigzag attachment. We objected to her testimony yesterday on the ground that she was incompetent to give us her opinion.

The Court: The trouble is that I don't think you grasp the significance of the lady's testimony. She does not say that every machine on the market, every straight stitch machine, has its own special zigzag attachment. She says that her experience in the industry has led her to the belief that [fol. 1461] there is on the market a zigzag attachment which can be secured, irrespective of its origin and manufacture,

which can be applied to any straight stitch machine that is sold.

That, I understand, is your testimony?

The Witness: Yes, yes.

The Court: That is the way I understand it. In other words, you might buy a John Doe straight stitch sewing machine. John Doe Manufacturing Company may not have its own zigzag attachment for that machine. It is possible that they don't manufacture one. But the lady testifies that you can buy on the market a zigzag attachment made perhaps by someone other than John Doe which can be applied and used on the John Doe straight stitch machine. That I understand is her testimony.

By Mr. Weinstein:

Q. Do you know of your own knowledge whether or not every straight stitch machine on the market is capable of being fitted with a zigzag attachment?

Mr. Klots: I thought she had explained that and answered that two or three times.

The Court: Well, we will let her answer it again. If this is an objection, it is overruled.

[fol. 1462] A. May I have the question again?

(Question read.)

Q. That question is directed to your own knowledge. I think it can be answered yes or no.

A. Within my own knowledge, yes, they can be fitted with a zigzag attachment.

Q. What is the basis of your knowledge, Miss Hutton?

Mr. Klots: Wait a minute. I submit, if your Honor please, that the expression "within my own knowledge" is ambiguous. I would like to know whether she means as far as she knows or whether she means that she does know. They are two different things.

[fol. 1463] The Court: You ask her that on redirect.

Mr. Klots: I think, before the answer——

The Court: Well, I know, but we cannot suggest to the witness that her answer is ambiguous.

Mr. Klots: No, sir.

The Court: She doesn't intend it to be ambiguous, I am sure. But if you do want to ask that question, I will accommodate you and ask it myself.

By the Court:

Q. What do you mean when you say within your own knowledge?

A. As far as I know. I know of——

Q. And you have been in this industry for twenty-five years?

A. Twenty-five years.

Q. And during that time you have been doing what at Singer?

A. I have been doing a variety of things, starting out at shop level, teaching and selling, and coming up through supervisory positions until 1945 when I became part of the field traveling staff of the Educational Department. Following that I became Assistant Educational Director, and [fol. 1464] Educational Director in 1956.

Q. Have you, as part of your work and training with The Singer Company, seen and operated machines of other manufacture?

A. Yes, yes. The testing——

Q. For how long have you done that?

A. From about 1950, '51.

Q. And during that time have you tested machines and tried out machines made by manufacturers other than Singer?

A. Other than Singer, yes; attachment manufacturers other than Singer.

Q. Not only attachment manufacturers but sewing machines other than Singer-owned?

A. Yes, yes.

Q. How many years have you been doing that?

A. Well, since '50, '51. Since 1950, 1951.

Q. Since 1950 or 1951.

A. Yes.

Q. Will you give us some idea about how many different machines you try out during a year for the purpose of comparison or study, how many you have tried out? Do you keep a record of it?

A. We do have a record on annual reports for the last— [fol. 1465] oh, I think, two or three years.

Q. Would it run up into hundreds of machines during this ten-year period?

A. It would probably add up to fifty machines and devices a year.

Q. That would be about 500, then?

A. This amounts to two typewritten pages, single-spaced. That is what I am guessing.

Q. All right. You tested, then, in the past ten years about 500 machines and attachments of different manufacturers?

A. Well, I wouldn't say that we had that volume every year.

Q. Well, approximately?

A. I mean the last several years we keep a detailed report form.

The Court: All right.

By Mr. Weinstein:

Q. Did Singer have a zigzag attachment prior to 1958, do you know?

A. Yes.

Q. What year did they have the first zigzag attachment? Can you tell us?

A. Prior to my time with the company.

[fol. 1466] When I started with the company, we had a zigzag attachment that we had to sell.

Q. Do you have any idea as to approximately how many straight stitch machines are being sold on the market today?

A. No, I don't.

Q. You don't know how many straight stitch machines are being sold on the market today?

A. You mean the types?

Mr. Weinstein: Yes, brands.

The Court: Brand names, manufacturers.

A. No, I don't have.

Q. And yet you want us to believe that——

The Court: No. That is argumentative. Don't frame your question that way. It is argumentative.

Q. I will ask you again, do you know of your own knowledge as a matter of fact that every straight stitch sewing

machine on the market today is capable of being fitted with a zigzag attachment?

Mr. Klots: I object to the question as repetitious.

The Court: Overruled. Give your answer again.

Mr. Klots: I ask counsel to say what he means by "of your own knowledge." What do you mean by that?

[fol. 1467] Mr. Weinstein: Whether she knows as a matter of fact.

The Court: Within your own knowledge.

The Witness: Within my own knowledge?

The Court: Within your own knowledge that you have had as a result of your years of experience.

A. Within my own knowledge, every straight stitch machine on the market today can be fitted with a zigzag attachment.

The Court: Would it be safe to say that every straight stitch machine that you have tested and examined in the past ten years could be fitted with an attachment, a zigzag attachment?

The Witness: I know of none that couldn't have been. However, we didn't always test them for zigzag attachments.

The Court: All right.

By Mr. Weinstein:

Q. I direct your attention to Defendant's Exhibit 146A, a swatch of stitches made on the Necchi Supernova machine, and I ask you to examine it. I am not quite sure of the orientation of this. Let us call——

A. We started at the top. This was always the top (indicating).

[fol. 1468] Q. In other words, the buttonhole is at the bottom, and the words "Necchi Supernova Ultra" are at the top. I ask you to examine the top three lines.

A. Yes.

Q. This swatch was made under your direction?

A. Yes.

Q. Do the top three lines employ, one, needle position, cam and cam follower?

The Witness: May I have that again? I think your terminology is different.

Q. Well, I am merely reading.

A. Different from what I understand.

Q. Do these top three lines employ what we generally call needle position effect and cam and cam follower effect and stitch elongation effect

A. I think this can be clarified by referring to our previous testimony. I believe these notations were marked for easy reference, and I think it followed a factual explanation on what we meant by needle position, cam and cam follower.

Q. Can you tell me of your own knowledge whether these top three lines employ stitch elongation?

A. Yes, it is obvious, because we start at this end. This is one interval of stitching. This is the medium elongation, [fol. 1469] and this is the maximum elongation. There are variations of elongation that is shown, because it is a gradual kind of elongation.

Now, as far as needle position, there is one cam, this cam. With the needle position, cam followers enable, with the same cam, the making of this, what we would call a ball stitch, the same cam making this stitch, the same cam making this stitch. In other words, the needle position cam, when the follower is activated, changes the point of origin of the design. These are things that are hard to explain if you are not in the sewing machine field.

The Court: They are clear to me. You said it throws a design either to the right or to the left.

The Witness: Yes.

The Court: Either above or below a center horizontal line.

The Witness: Yes.

The Court: And that is apparent in the first and the third. By elongation you refer to the length of the design?

The Witness: Yes.

The Court: There is a variation there. Don't you observe that?

[fol. 1470] Mr. Weinstein: Yes, I do, your Honor.

The Court: I don't think there is any difficulty on that.

Mr. Weinstein: I just want to clarify this in relation to whether or not similar methods are found on the Singer machines.

By Mr. Weinstein:

Q. I put before you Defendant's Exhibit 106B, which is the insert out of the 401 machine, the cam mechanism, and Exhibit 116B, which is the insert out of the 403 machine, and I ask you to examine them and tell me whether or not this has a provision on it for shifting left, center and right.

[fol. 1471] Mr. Klots: I merely suggest that if the witness would prefer to have the whole machine put before her——

The Witness: I don't need it.

Mr. Klots: She doesn't need it. All right.

A. The 401 and 403 have the provision of shifting from left center to right needle position. The influence of this shifting is in effect only when one is operating at a width narrower than maximum. It does not change the point of origin of the design. It changes the design in relationship to the presser foot. When taken out from under the machine, no one can tell whether it was stitched in right, center or left needle position. It does not change the conformity of the design.

Q. My question again is: using the 401 and 403 machines with a given cam pattern in the machine, may you shift the resultant pattern left, center and right?

A. You can shift the position of the pattern in relationship to the presser foot. You cannot shift the position of the pattern in relation to its conformity.

Q. Fine. So that, to the extent that you get a different [fol. 1472] stitch on this Necchi Supernova, from the point of view of its being shifted, it is only different than Singer's, is it not true? It is not something revolutionary.

A. No, it is a different design. Necchi is not being shifted. On Necchi the conformity, the shape, the pattern is changed. This gives multiplicity.

Q. Which gives multiplicity?

A. The Necchi feature.

Q. Can't you get multiplicity on the Singer machine?

A. This gives multiplicity by a different mechanical means.

Q. What is the function on Exhibit 106-B of the red lever?

A. The red lever has two functions—has three functions. In some operations it is a bight control. In some operations it determines the conformity of the pattern, it determines

the percentage that one cam is influencing the stitch against the other. Under another circumstance it can be a needle position. However, that is not a recommended needle position.

Q. It is a needle position?

A. It can be a needle position. That is not the recommended means of creating it.

[fol. 1473] Q. But it is one of the three functions?

A. It can be, yes.

Q. As long as we have these two exhibits here, I would like to direct your attention to the cam mechanisms and ask you if you know whether or not these two mechanisms are made of the same parts with the exception of the stack of metal cams being on the 401 as opposed to not being on the 403.

Mr. Klots: If she knows.

A. The extent of my knowledge about the sameness of parts would refer only to the black cam itself, the replaceable cam. It is interchangeable.

Q. In your working with Mr. Johnson on this 403 machine, did it ever come to your attention that these machines are substantially identical and that you could very easily convert the innards of the 403 into the 401 machine?

A. I don't know where you would put it because the casting isn't big enough to contain it.

Q. You mean the housing around the machine?

A. I mean the die casting which is a very expensive part of any sewing machine.

Q. Can you point out the die casting for us?

[fol. 1474] A. It is everything you see.

Q. The housing, this brown and gray part (indicating)?

A. Yes.

Q. In other words, the change in the casting would be necessitated by adding the cams and putting this handle through, is that not correct?

A. If what? I mean, you lost me.

Q. Let's take it slowly.

The Court: Of course, this lady is not produced as a mechanical engineer. She hasn't given any testimony as to the engineering features.

Mr. Weinstein: Your Honor, she has testified that she worked with Mr. Johnson in the development of the 401 machine.

The Court: Yes, she gave him the results of her experience from operation, and that is what I understand you testified to.

The Witness: Yes, in use.

The Court: The operation of it.

The Witness: And I stated, I think, before that I am not an engineer.

The Court: No. That is apparent.

The Witness: I am a home economist.

[fol. 1475] Mr. Weinstein: Your Honor, I only pursued it because I thought it was obvious——

The Court: Let me look at these myself. I can make these observations myself with you on these.

The Witness: Of course, we testified that there are many similar parts.

The Court: It appears from my visual observation that some of the castings on the 401 were reproduced on the 403. However, some castings are new and different in the 403 than they are in the 401, distinctly different. That is visually apparent.

Mr. Weinstein: We only wish to show, your Honor, that the changes are only necessitated by having the dial pattern effect. Each machine has essentially the same casting, has the same top fitted for the black cam.

The Court: Each machine has many castings in common, suppose we put it that way, and that is apparent from a visual observation. I don't think we need testimony on that.

However, there are a number of castings which are found in the 401 which you do not find in the 403, and it appears that there are castings in the 403 which are different than those in the 401, not only castings but other mechanical [fol. 1476] features. You will notice that the spring arrangement that functions on the cam follower is different on both the machines.

Mr. Weinstein: I think that may be from a change of design.

The Court: I don't know to what it is due, but there it is. All right.

Mr. Klots: I suggest, your Honor, if any more of these mechanical questions are to be asked, they be asked of somebody who is an engineer.

The Court: I am going to permit him great latitude in his cross-examination. If Mr. Weinstein propounds a question that you think is objectionable, you object to it. But I am not going to give him an omnibus direction which is going to limit his cross-examination.

By Mr. Weinstein:

Q. With respect to stitch elongation, Miss Hutton, examine Exhibit 146-A and examine the top three lines. Take the first line. Isn't it true that the pattern is exactly the same?

A. Yes.

Q. Just the length of the pattern differs?

A. Yes. There are more stitches between the beginning [fol. 1477] and the end.

Q. And isn't it true that the 401 machine either is or could be designed to produce that pattern?

A. No, it is not.

Q. It is not?

A. It would not be a 401 machine.

Q. No, no. I am not talking about the elongation feature.

A. I am sorry.

Q. I am talking about the specific design, the shape.

A. Yes, yes, and I so stated when this original testimony was given in order to explain the difference.

Q. And didn't you testify that numerous cams could be made?

A. Yes. This part, with a 24 stitch interval, would require three different cams for the 401, 403 machine or the automatic zigzag attachment which would be in the 12 cycle. [fol. 1478] Mr. Klots: You are pointing to the lefthand edge of this swatch?

The Witness: Yes.

The Court: So that we have it all on the record, what is the exhibit number?

Mr. Weinstein: I believe it is 146A.

The Court: 146A.

By Mr. Weinstein:

Q. In other words, if Singer chose to give this feature to the consumer, it could do so by merely having her turn this knob to three different positions and getting the elongation effect?

A. No, you were not talking about elongation. You said you were talking about this (indicating).

Mr. Klots: What do you mean by "this feature"?

Q. Can this be produced on a cam used on a 401 machine?

Mr. Klots: May the record show what he is pointing to, your Honor?

The Court: He is pointing to the beginning——

Mr. Weinstein: The lefthand third——

The Court: —with the smaller elongations.

A. No. At this point the elongation has not been in use. This is the base position. This is the standard number of [fol. 1479] penetrations per design.

The Court: Before the elongation is put into operation.

The Witness: That's right.

Q. Could a cam be designed to reproduce this particular design in the lefthand third of this exhibit you are looking at?

A. Three cams could be produced.

Q. No. Please answer my question.

A. Could one cam? No.

Q. One cam could not be designed——

A. To produce these three things?

Q. No. The first third of the top line.

A. Of the top line. One cam could be designed to produce this, and this is what we call, I believe, the solid scallop.

Q. You do have a cam of that nature?

A. Yes. We have one of the second. I doubt if we have one of the third.

Q. Could a cam be produced to produce the middle third?

A. No, it could not. There are too many penetrations. There are more than 24.

Q. A cam could not be designed to do that?

[fol. 1480] A. No it could not.

Q. Could a cam be designed to produce the lefthand third?

A. No.

Q. In other words, you say these portions are not producible by any cam that could be manufactured?

A. That's right, because needle penetration No. 25 must start at exactly the same place as needle penetration No. 1, in Singer. You would be left high and dry in the middle of it.

The Court: What "it" means I don't know.

The Witness: The "it" is the long scallop, the elongated end of row No. 1.

Mr. Klots: If your Honor please, may I ask Mr. Weinstein: when you were talking about whether a cam could be developed, you meant for the Singer machine?

Mr. Weinstein: The 401 machine.

The Court: I understand that, and the witness did, too. She shakes her head.

The Witness: Yes.

The Court: She shakes her head affirmatively or nods her head, I should say.

* * * * * * *

[fol. 1481] By Mr. Weinstein:

Q. Miss Hutton, you testified that you were the head of the Singer Educational Department?

A. I am Educational Director, yes.

Q. You have been Educational Director for how long?

A. Since April 1, 1956.

Q. How many people are in your department?

A. We have 19, I believe, on the payroll today.

Q. Would you mind telling me again what the functions of your department are.

A. The functions are varied. We are primarily responsible for consumer education and employee education related to product. It goes further. There are other definite divisions in the department.

Q. What are those divisions?

A. We have a group within the department that works on product and product development. This is the aspect of testing prototypes, testing and evaluating, I should have said. We evaluate and test production, both initial and continued production. We test competitive machines. We test threads that are submitted to us. We test notion items that are [fol. 1482] submitted to us that relate to sewing and sew-

ing usage. I mean, this is an evaluation of the product department from a consumer viewpoint, from a use viewpoint. This group also does the instruction books.

Q. When you say "test the products," you mean you test it just from the consumer viewpoint?

A. We test it from an operational viewpoint. We put it through sewing operations, and our experience over a period of eight or nine years has enabled us to more or less standardize and streamline on test procedures.

Q. In other words, is it true that the tests that you put a machine through give you a pretty good idea of how good a machine it is?

A. And the well-rounded performance of that machine.

Q. You speak of education of both the public and members working in the Singer sewing machine shops. Can you tell us a little bit about what you mean by education of the consumer?

The Court: Well, I take it that the questioning that you are now pursuing is not from the point of view of the job analyst to find out what grade pay she should get and what work she does but is directed to determining her qualifications as an expert concerning the matters on which she [fol. 1483] has given testimony?

Mr. Weinstein: No, your Honor. I am interested in the internal operation of her department.

The Court: What bearing does that have on this case, except in so far as it might affect her qualifications as an expert and the testimony she has given which she says flows from her observations?

Mr. Weinstein: I think it sheds light, your Honor, on——

The Court: I mean, I am trying to get the purpose of this line of interrogation.

Mr. Weinstein: I think it sheds light upon the value of the recommendations made by people within her department, the type of work they do. I think that Miss Hutton is supported by her staff. Her work must, in turn, be judged by her staff and what they do and the information she gleans from her staff. In so far as she does not get it firsthand from the consumer, it must come up through these people that work for her, so to that extent we think that the functions they perform and what they do in the field, the infor-

mation they garner, are important in judging the impressions that Miss Hutton has gotten from them.

The Court: I think, then, your questioning should be direct [fol. 1484] to that phase of her work and her testimony and not skating around, much as you would if you were an efficiency man or a job analyst or a personnel man. Come direct to the question and ask her direct questions, and come right down to the issues.

Mr. Weinstein: I think the questions have to be somewhat broad, your Honor, because I don't know if they do, and I cannot even lead her on this.

The Court: I will do it, if you want me to.

Mr. Weinstein: I will be more than happy to do it, your Honor.

The Court: Did you want to say something, counselor?

Mr. Elkins: No, your Honor.

By Mr. Weinstein:

Q. Do the workers who work for you go out and demonstrate machines at fairs and department stores and places of that nature?

A. If you consider the annual convention of the American Home Economics Association a fair or within the category that you are quoting, yes, I do that myself.

Q. Do the other members of your staff also do that or similar things?

A. Members of my staff do it. I noted in my original testi- [fol. 1485] mony regarding my work that we have some 75 to 80 educational supervisors located in the 32 or 36 agencies; I am including Canada now. There are 32 U.S. agencies. These girls are under our indirect supervision in so far as we supply them with knowledge. We do not administrate as far as their pay and time. They are educational supervisors, and they are directly related to the Educational Department.

These girls are constantly working in all fields of customer contact as well as in training the new girl on the shop floor or the new girl in the sewing room. These girls are together with us at meetings periodically.

Q. What kind of meetings, may we know?

A. Well, educational meetings, meetings where we hash out problems, where we find what their recommendations

are, where we find out what changes need to be made, what emphasis needs to be made.

Q. Who is in charge of those meetings ordinarily?

A. It would be either myself or members of the traveling staff, the Educational Department traveling staff.

Q. How many members are there on this traveling staff?

[fol. 1486] A. We are down to four at the moment because we have a vacancy. Normally there are five girls. They travel 48 weeks out of 52. They are scheduled from our department and paid from the New York office. They are in at least once a year. Often, individually, they are in more often. We have a direct and constant contact with them and reports on every single shop visit and agency visit they make. This is the kind of work I spent a number of years doing myself.

Q. These women have an expert knowledge of Singer sewing machines, do they not?

A. These women have more years of experience with the company than I.

Q. Would you say that every woman on your staff is completely familiar and versatile in using all of the Singer sewing machines?

A. Yes, absolutely.

Q. Would you say that——

A. Except secretaries, of which we have three.

Q. Are they included in the number you gave us?

A. You asked how many employees. They are employees. They are not technical staff. There are three clerical people.

Q. And how many technical staff?

[fol. 1487] A. Well, three from 19 is 16.

Q. Are they generally familiar with the operation of competitive machines? And I use "competitive" in a very loose sense.

A. If you use "generally" in a very loose sense as applied to some of them, I will say yes.

Q. Were the people that prepared the swatches which were introduced by Mr. Klots in evidence members of that staff?

A. They are members of the group that I would say are especially familiar, because these are girls that are doing product testing as I enumerated.

The Court: Would you be able, here, now, yourself, if asked to do it, to reproduce any of these swatches?

The Witness: Yes, providing I could use the instruction book. From rote, memory, in front of a group like this——

The Court: You would get a little nervous?

The Witness: —I would expect to forget some adjustments. With use of an instruction book, by all means. There is nothing fantastic about the operation of any of these machines.

The Court: And it could be reproduced, if required, right [fol. 1488] here, duplicates?

The Witness: Absolutely.

The Court: I am not asking that they be reproduced, but if you want any reproduced, I suppose we could have that done, if you question of the authenticity of any of these swatches.

Mr. Weinstein: We do not question that they were made by members of Singer's staff, your Honor.

The Court: Or on the respective machines designated?

Mr. Weinstein: Nor do we question that.

The Court: All right.

Q. In what you refer to as customer education or public education or public relations, do you have occasion yourself, personally, to talk to many people at this American Home Economics Association meeting?

A. Yes, we have hundreds of people visit our booth.

Q. What type of people generally come to the booth?

A. The attendance at the American Home Economics Association Convention is composed entirely of home economists. Some of these home economists are foods people. The majority of those who come to our booth are those who are either teaching clothing and textiles in colleges or they are teaching a varied range of home economics. Some call [fol. 1489] it home and family life. They have a number of names for it in schools today, in junior high schools, in senior high schools, at the secondary school level. There are a group that are home economists in business, the HEWIBS. These are girls who work for companies. It includes all home economists in business. They are foods companies as well as the sewing industry.

Q. I would imagine people come to this conference, do they not, who represent newspapers, who write home economics columns?

A. To some degree. However, most of those contacts are made here in New York. There are so many sources—the magazine location is in New York.

Q. I am sorry.

A. The magazines are usually edited in New York. These editors we might see, but we spend less time with them simply because we can see them any day in New York.

Q. Under what circumstances do you normally meet people from publications with respect to your work?

A. Normally for editorial.

Q. Can you specify a little bit? I don't quite follow that.

A. They would be sewing articles.

[fol. 1490] Q. Sewing articles?

A. Articles done editorially.

Q. Do all members of your staff consult with these people?

A. No, of course not.

Q. Do you do most of that work?

A. No, I don't.

The Court: You mean if you give a magazine an ad, they give you a write-up? Is that what you mean?

The Witness: Not necessarily. There are many magazines that we get periodic promotions, general sewing promotions or, often, specific sewing promotions, because we do sewing and designing for editors. We have several very good designers in our workroom. Let me see. There are five girls involved in supplying editors with materials that encourage and promote and instruct in home sewing, in the full range.

Q. Can you name some of the magazine editors or personnel that you have consulted with in the past three or four years? Merely name the magazines, and I think that will be sufficient.

The Court: I don't know what your purpose is. Do you have a magazine article you want this witness to look at?

[fol. 1491] Mr. Weinstein: No, your Honor. I think we can tie this up.

The Court: Why don't we come right down to it? What is the purpose of this?

Mr. Weinstein: Well, your Honor, there are numerous

magazine articles that have been introduced with statements ranging all over the lot, and we are anxious to know whether or not these people are educated by Singer. Singer being the sole American manufacturer, it seems to me that——

[fol. 1492] A. I presume you understand that this kind of function, the source and all is what the company pays an advertising agency to make the contacts, to create the contact and very often to disseminate the information.

Q. Do you ever disseminate information to Good Housekeeping, for instance?

A. Yes, yes.

Q. Consumers Reports?

A. I have personally given nothing to Consumers Reports. I presume that would come from a more technical source.

Q. Will you tell us what you mean by "a more technical source"?

A. Well, Consumer Reports deals more with the mechanics.

Q. Are they not concerned, to the best of your knowledge, with the housewife and what she wants?

A. They have not contacted me and I have not contacted them, but whether the company has given them information I cannot testify to because I do not know.

The Court: In your stores—for instance, the one you have up in the Bronx on Fordham Road, you have a demonstrator [fol. 1493] there that gives lessons?

The Witness: Absolutely, yes.

The Court: And if a man, a young husband goes in with his bride to buy a sewing machine, they will give a demonstration?

The Witness: Yes, that is part of sales work. As I understand it, Consumers Reports and these consumer magazines, they do not want to be fed information. They go out and buy a machine and have it tested in their own labs.

Mr. Weinstein: Your Honor, I ask that that be stricken. This witness is not qualified to testify.

The Court: Of course she is not, but you——

Mr. Weinstein: I asked her specifically, your Honor, as to her connection with Consumers Reports.

The Court: She said she hasn't anything to do with it, and I will take that as her answer. She says that is taken care of by the technical department.

Mr. Weinstein: And I ask that her last sentence be stricken.

The Court: We will strike it. I am not going to pay attention to it.

Q. Have you ever contacted people or been contacted by people representing Consumers Research Bulletin?

[fol. 1494] A. No, I personally have not.

Q. Have you personally written any article for sewing machines or sewing machine operation or consumer desires in the way of sewing machines?

A. That was published under my name do you mean?

Q. No, I did not ask you that. I asked you whether you had ever written an article?

A. I have never written an article as such. There is material that I have written that might have found its way into being printed.

Q. Do you know of any material——

A. I do not know of any.

Q. Have you ever ghosted an article, Miss Hutton? I use the term ghosting in the sense that it is written but not under your name.

The Court: No, written under her name but somebody else has done it. It is like ghost-speeching. You have somebody to write it for you.

Q. Have you ever written an article which has been published or reproduced under somebody else's name?

A. You are speaking of magazines and newspapers?

Q. Any articles that might have——

A. Are you speaking of books?

[fol. 1495] Q. Any of those.

A. I have written books that have been published in the Singer Company name.

Q. Under the Singer Company name, and you have written instruction books?

A. Yes.

Q. Have you ever written a magazine article or an article that appeared in a magazine?

A. Not that I can recall.

Q. Or in a newspaper?

A. No, I don't think so.

Q. Has anybody on your staff ever written an article which has appeared——

A. We are constantly writing—members of our staff constantly write sewing instructions that become parts of articles.

Q. Can you give us the specific instances—can you recall any of them?

A. I would not give you—I would not attempt to recall specific instances. I am constantly okaying copy. I wouldn't begin to tell you—I mean, we can produce evidence, I am pretty sure, of some of that but I wouldn't begin to tell you. I would not really——

Q. Do you keep records?

[fol. 1496] A. I do not keep records of that kind.

The Court: Is this preliminary to your confrontation of the witness with a specific article?

Mr. Weinstein: Your Honor, there are a number of articles that the defendants have put in evidence.

The Court: Why don't you bring one out and show it to her and ask her?

Mr. Weinstein: Your Honor, a number of articles have been placed in evidence by the defendants. We do not know how they are going to use it. We do not know whether they are going to bring them up before the Court or whether they are going to rely upon them for findings at the close of the trial.

The Court: They are in evidence, and if you have any particular article that has been received in evidence that you want to question this witness about, produce it, show it to her and interrogate her about it.

Mr. Weinstein: We have no further questions on this subject, your Honor.

The Court: All right.

By Mr. Weinstein:

Q. You spoke yesterday of Singer's first machine being the 404, and I believe you said that by that you meant not [fol. 1497] that it was first from the point of view of com-

ing out on the market but it was your low price 400 series machine.

A. I believe my statement was that the 404 was the first in the slant needle series, and by "first" I meant the first in the sequence of price build-up—the first in the sequence of simplicity.

Q. What do you consider the top of that line?

A. The 401.

Q. 401?

A. Yes.

Q. Which is——

A. This machine (indicating).

Q. —Defendant's Exhibit 106 in evidence.

You stated yesterday that an informed consumer would only draw a distinction between the 401, 403 and 404 on the basis of two factors: one, price, and two, whether she considered——

A. I don't believe I said that. May I have my own words? Because I think they mean differently.

Q. Well, I will just ask you the question again.

Do you think that price is a factor to an informed customer that comes into the Singer store?

A. Yes.

[fol. 1498] Q. Am I quoting you correctly when I say that you said yesterday that the only difference between the 401, the 403 and the 404 machine was in the cam mechanism, either its absence in the case of the 404, or the replaceable cam mechanism or the multi-cam mechanism in the 401.

Mr. Klots: I don't think she said that.

A. I didn't say it that way.

Q. Did you not testify yesterday that the only difference in the 400 series machines related in the means for producing the patterns by cams, the type of cam mechanisms?

A. No, I did not.

Q. You did not state that yesterday?

A. No.

The Court: If you have such testimony you had better show it to the witness. Otherwise this questioning hangs in the air.

Q. I am reading to you from page 1399 of the record. I asked you——

The Court: No, "Were you asked this question and did you make this answer."

Q. Were you asked this question:

"Q. What does the 403 machine have or do that the 401 [fol. 1499] machine does not do", and did you answer——

Mr. Klots: That is not quite the question.

Q. "Q. What does the 403 machine have or do that the 401 machine does not do?"

Do you remember being asked that question?

A. The cam——

The Court: Pay attention. Were you asked that question?

Q. Do you remember being asked that question?

The Court: "Do you remember being asked that question and making this answer 'Answer'—" Read the answer.

Q. Do you remember giving this answer—do you remember being asked that question?

A. I was asked so many that were so closely related——

The Court: This is a slightly unorthodox way of examining the witness. If you will follow my suggestion, I think you will get somewhere.

"Were you asked this question and did you make this answer"—and then read it to her, question, answer.

Q. Were you asked this question and did you make this answer "Q. What does the 403 machine have or do that the [fol. 1500] 401 machine does not do?

"A: You are talking about operations now?"

Do you remember that?

A. Yes, and that was quite confused——

The Court: Please—do you remember that?

The Witness: Yes.

The Court: Did you make that answer?

The Witness: Yes.

The Court: Then "Were you asked this question and did you make this answer"—go ahead.

Q. "Q. Yes. Aside from the zigzag pattern mechanism.
"A. Nothing.
"Q. Nothing?
"A. Aside from the zigzag pattern mechanism."

Do you remember that?

A. Yes, but it really doesn't——

Q. Do you remember it?

A. Yes.

Q. I ask you again, is it or is it not true that the only substantial difference between the 401 and the 403 machine resides in the cam mechanism?

A. We were talking about operational in that line of questioning. If you are still referring to operational dif-
[fol. 1501] ferences, none.

Q. What do you mean by "operational differences"?

A. I mean that there are parts that are different in this machine, some parts.

Q. Is the difference in parts—does the difference in parts arise because one has built-in cams and one has replaceable cams?

A. Yes, but there is a difference with the cam itself. It is in linkage and——

Q. But created—the difference is necessitated by the difference in the cam mechanism, is it not?

A. Yes, if you are using your term in a broad sense.

Q. No, I am not using my term in a broad sense. I am using my term in a narrow sense.

I showed you these before and I was told that you were not qualified to testify to it. Now you want me to distinguish between "narrow" and "broad" senses.

Are these machines the same except that one is a replaceable cam machine and one is a built-in cam machine? Do they have the same tensioning devices, the same needle devices?

A. Yes.

[fol. 1502] Q. And the same feed reversing devices?

A. Yes.

Q. The same fine stitch devices?

A. Absolutely.

Q. And if there are some differences in the casing; that is required because one cam mechanism takes a little different spacing requirement than the other?

A. That is right—the outward design, the plating, the top cover plate is different.

Q. But again——

A. It relates indirectly to the lack of bulk required for housing the multiple cam device.

Q. And is the 404 machine different from the 403 and from the 401 solely because it does not have a cam mechanism which is designed to take zigzag patterns?

A. It goes a little further than that.

Q. Would you explain what you mean?

A. It is different in respects because it is designed not to —even basic zigzag—you are not distinguishing in your remarks between patterns of basic zigzag, I presume.

Q. That is right—the 401 machine and the 403 machine, if you were not going to have zigzag pattern mechanism [fol. 1503] included within them, would be no different than the 404 machine, is that correct? In other words, taking——

A. They would all be 404s you mean?

Q. Yes.

A. If you do not have the 403 and the 401 you would have 404.

Q. Taking away the mechanisms of the 403 and the 401, is there any feature which the three machines do not have in common?

Mr. Klots: Again I suggest, your Honor, that she is not an engineer and she cannot answer.

The Court: If she cannot, she will tell us.

Q. Did you——

The Court: In other words, let me see if I understand Mr. Weinstein.

The basic machine is the 404—that is a straight stitch.

The Witness: Yes. However, the 401 was designed first. The others sprung from that.

The Court: Oh, the 401 was the first machine?

The Witness: Yes.

The Court: And that is with the built-in cam?

[fol. 1504] The Witness: Right.

The Court: And then the next machine was the 403?

The Witness: 403.

The Court: And that is with the replaceable cam?

The Witness: Right.

The Court: And then the 404 is the 401 essentially with all the cam mechanism taken out?

The Witness: And they were designed to have as many parts in common as possible and still be the kind of machine they are.

The Court: All right, that is sensible. If they had as many parts in common it would be less costly in production.

The Witness: Absolutely.

Q. Did you write the instruction book for the 401 machine?

A. I did not physically write it.

Q. Was it written under your supervision?

A. It was written in our department. The educational department works in conjunction with the editorial department at the Elizabethport factory.

Q. Are you thoroughly familiar with the contents of this [fol. 1505] book (handing witness)?

A. Yes.

Mr. Weinstein: Let the record show that this is Government's Exhibit 201 in evidence.

Q. Are you thoroughly familiar with the similar books for the 403 and 404 machines?

A. Yes.

Q. I ask you again whether there are any distinguishing features between these three machines which do not relate to the cam mechanisms, either the type of cam mechanisms or their absence or presence, and the cam mechanisms that are designed to produce zigzag patterns?

A. If you are going so far as to want me to point out the fact that the feed dog is different in design on the 404 than it is on the 401 and 403, I am interpreting that to be related to the lack of swing of the needle that has permitted it—I mean, you classify it and I will give you the information.

The Court: I think the witness has answered this very plainly.

Mr. Weinstein: Your Honor, I have read the transcript

yesterday and although I think the witness gave me this answer, I wanted to be sure that it was crystal clear.

[fol. 1506] The Court: Now you are sure—I mean, are you sure now?

Mr. Weinstein: I think I can tie it down in another minute or so.

The Court: Go ahead, take your time.

Q. Laying aside for the moment cam mechanisms, are the features described in this book, in the operations, that you can get on the 400 series machines identical?

A. On the 400 series machines? No, they couldn't be.

Q. Laying aside cam mechanisms, they are not identical?

A. Laying——

Q. Laying aside—forget the cam mechanism, do you have a different tensioning adjustment?

A. We do not.

Q. Can you specify the differences in the machines?

The Court: Between what machines?

Mr. Weinstein: 401, 403 and 404.

The Court: What is the difference—take two machines.

Are you able to say what are the construction differences [fol. 1507] between the 401 and the 403—if you know.

The Witness: I think an engineer would be required for that.

The Court: All right. Can you tell us the construction differences between the 403 and the 404?

The Witness: No.

The Court: An engineer would.

The Witness: That's right.

Q. Let us confine ourselves to the 401 and the 403 machine.

A. Yes.

Q. Does either of these two machines perform a function that the other two will not perform, aside from the differences?

The Court: You are talking about two machines?

Mr. Weinstein: 401——

The Court: Does either one of these two machines, the 401 or the 403 perform a function that cannot be performed by both?

The Witness: Does either one perform a function that cannot be performed by both?

The Court: Yes, ma'am.

The Witness: Yes.

[fol. 1508] Q. What is the difference?

A. The 401 can make stitches that we have termed or described as variation stitches and combination stitches.

Q. Is that because it has a built-in mechanism from which you can select information from two cams simultaneously?

A. Right.

Q. Are there any other differences between these two machines?

A. Not that I can recall by rote. If you want, I will testify as to whether——

Q. No, is there any——

A. I cannot recall.

Q. Aside from the 401 being a built-in cam machine, and the 403 being a replaceable cam machine, they have all of their features in common; is that not true?

A. Yes.

Q. The 401 we discussed yesterday cost approximately $60 more than the 403.

Did you not testify that price is a factor that the customer takes into consideration?

A. Price is one of the factors, yes.

[fol. 1509] Q. I tell you that it has been stipulated that in 1960, approximately twice as many people bought the 401 as bought the 403; and in 1959, approximately three times as many people bought the 401 as opposed to the 403.

Since the 401 costs approximately $60 more than the 403, isn't it true that the customers that purchased the 401 machine bought that machine in spite of the increased cost?

A. No it is not, because many of the customers probably had not investigated as to the price of the 403 machine.

Q. In your experience as head of the Singer educational department do you expect us to believe that the average consumer walks into a Singer store, looks at one machine, purchases it and does not even ask to see the other machines?

The Court: The Court sustains its own objection.

You are getting into an argument with the witness.

Please do not do that. I have asked you that before. What she expects us to believe or not is not proper.

Q. Is it a fact that people come into the Singer stores and [fol. 1510] merely ask for the built-in cam machine?

A. I think I testified that I have never heard of that happening.

Q. How many shops have you been in in the last two years?

A. I would be—it would be only hearsay if I guessed. I couldn't begin to guess.

The Court: It wouldn't be hearsay. "Hearsay" is what somebody else tells you.

The Witness: It would be hearsay if I guessed because it would be a wrong guess.

Q. How many customers have you spoken to in the last two years?

A. I would not venture an answer.

Q. You cannot even give us an estimate, Miss Hutton?

A. No. I answer the telephone, it rings constantly.

Q. How many machines have you sold in the last two years?

A. I haven't sold any. That is not my function.

The Court: It isn't smart for a supervisor to take a sale away from a saleslady, is it?

The Witness: Absolutely not.

Q. Do you ever sell a machine except for the closing of [fol. 1511] the transaction and let a saleslady take over and make the sale?

A. What do you mean—do I today?

Q. Yes.

A. No.

Q. Have you in the last two years?

A. Yes, at conventions.

Q. Have you visited Singer shops around the country in the last two years?

A. A few.

Q. How many, can you approximate?

A. Not too many. We have——

Q. What was your answer?

A. Not too many.

Q. You were going to say—I am sorry, I thought you had not completed your answer.

A. No, I am finished.

Q. I show you a copy of Plaintiff's Exhibit 200, which is the advertisement you testified to yesterday, and I direct your attention to the left-hand side of the advertisement under the picture of the 401 machine, where it says "Famous Slant-O-Matic". . . finest fully automatic sewing machine you can own."

And I direct your attention to the picture of the 403, in [fol. 1512] the upper right-hand corner and the words underneath where it says "New! Slant-O-Matic Special . . . brilliant automatic machine." And I ask you what you mean by the term "automatic machine" and "fully automatic machine"?

A. (After examining) I think the use of cams is the basis for the description. The zigzag is produced in contrast to a manually produced——

Q. What is the difference between, in your terms "fully automatic machine" and "automatic machine"?

A. Multiplicity.

Q. Multiplicity?

A. Yes.

Q. You mean the ability to combine information from two cams, is that what you mean?

A. No, not necessarily. The ability to do a range of—oh, decorative operations, based on more than one principle. This kind of terminology is advertising terminology.

Q. Please answer my question. I asked you—you told me that the only difference between these two machines is that one has built-in cams and the other has replaceable cams,

A. Yes.

[fol. 1513] Q. I show you the pictures here and one says "fully automatic" and the other says "automatic".

Doesn't this mean that what this is—isn't what this advertisement means is that a fully automatic machine is a machine with built-in cams, and an automatic machine is a machine with replaceable cams?

Mr. Klots: I suggest, your Honor, to find out whether this lady wrote this.

The Court: We can ascertain that from reading the exhibit ourselves.

On the 403 it says "Just slip a disc onto the machine. Presto! You're decorating linens, curtains—things for the family. It's the easiest to operate automatic machine you can buy."

They are both called "automatic" machines.

Mr. Weinstein: Your Honor, the 401 is called "fully".

The Court: "Fully", that is right, and it is apparent that that is because you do not have to replace the cams if you do not want to. If you are satisfied with what is in it, go ahead. If you want more variety, you replace it.

Q. Is his Honor correct, Miss Hutton?

[fol. 1514] A. Yes.

The Court: Even in the 401 you can change the cams if you want to, can't you?

The Witness: Yes, yes.

The Court: And you have how many cams that go with that 401 as a standard set?

The Witness: You have four additional—there is one replaceable in the machine and four replaceable in the box——

The Court: In any event——

The Witness: I think any of the cams that are available for the 403 can be purchased for the 404.

The Court: 401 we are talking about.

The Witness: I misspoke.

The Court: In other words, the 401, although it has a fully automatic fixed cam, you can take those cams out and change them?

The Witness: Right—not those particular fixed ones but the one on the top.

[fol. 1515] The Court: On the top.

The Witness: Yes.

Q. You can only remove the one cam?

A. Yes.

Q. Isn't it true that you can get in excess of 22 patterns without removing any cam from the 401 machine?

A. Yes.

Q. Isn't it true that you testified yesterday that 22 patterns, so far as the average housewife is concerned, is more than enough?

A. Yes.

Q. Isn't it true that the average housewife, again in the case of using her machine, would have no desire or necessity for replacing the cam?

A. In the 401 are you referring to?

Q. Yes.

* * * * * * *

The Court: When you ask the question of a female's desires or a man's desires, you are getting into a very touchy subject.

Mr. Weinstein: I will withdraw the question.

The Court: I think we all have desires, and we do not like to have them all publicly known.

[fol. 1516] Q. Miss Hutton, I direct your attention to the 401 machine and to the flip-up chart on it.

Didn't you testify that you recommended that those patterns and that selection chart be placed on the machine because you felt that those were the most desirable patterns?

A. We had a voice in the selection of the patterns, yes.

Q. Does every one of the 400 series machines have a slant needle to it?

A. Yes.

Q. Is that one of the features that help sell the 400 series machines?

A. I would think so.

Q. Do you know so?

A. Yes.

Q. Isn't it true that that slant needle is actually inferior in the sense that it is inconvenient and troublesome when stitching materials because it is at a 9-degree angle?

A. I don't know what would make you think that. That certainly is not my opinion.

Q. Isn't it true that the tensioning device on the 400 series machines is an old-fashioned tensioning device? I am [fol. 1517] asking you for your opinion.

A. Isn't it true that it is an old-fashioned device?

Q. Yes.

A. No; it is extremely functional.

The Court: What do you mean by "old-fashioned"? One that has been in use for some years?

Mr. Weinstein: Your Honor, we ask that the defendant's

exhibit 146B, although it is in subject to a motion to strike, be stricken at this time. It is clear that the very witness that was to put this exhibit in, or put it in at least for the time being, has impeached the very accuracy of this comparison chart.

The Court: I do not know whether she has or not. I do not see that. I received this in evidence subject to further proof as to its source because you said you did not know and were not prepared to concede its source, so I said to the defendant's counsel that they bring in some witness, if necessary, by subpoena.

Mr. Weinstein: I merely suggest, your Honor, that even if Singer is able to find a sponsoring witness for this chart, that it has been impeached by a witness of Singer.

I refer you to item No. 8 on the righthand side of the chart [fol. 1518] which says "A needle that slants has a longer motion in going through the material. It is liable, in some cases, to cause trouble and inconvenience, in sewing certain materials."

I refer you to item No. 4 which says: "Old-fashioned type of tension adjustment. No clearly marked red dot for normal tension setting."

Now Singer has asked us to take this chart as an accurate comparison between the Necchi and the 401 machine, your Honor, when it is quite clear that they themselves do not believe it.

The Court: You pointed out one of 19 items enumerated in that order—1 to 19.

Mr. Klots: We also offered it to show what Necchi pointed out in competition with Singer.

The Court: And there are claims that the Necchi machine is better and performs all the functions of the 401. That was the reason I took it into evidence.

Mr. Weinstein: Your Honor, if it is in for accuracy, then I again suggest respectfully that it is obviously inaccurate, at least from the point of view of Singer.

The Court: You mean that Singer is meeting unfair competition from Necchi? If you want me to take notice of that, [fol. 1519] I will do it.

Mr. Weinstein: I am sorry, your Honor.

The Court: If you want me to take notice of the fact that this is an act of unfair competition, that Singer is meeting

from Necchi, I will do it; that Necchi is making claims for its machines which aren't so, as against Singer's.

Mr. Weinstein: If that is the purpose for which it is coming in, your Honor, we have no objection to it coming into evidence for that purpose alone.

The Court: No. It is coming into show that there are claims in the market which substantiate the position taken by the defendant, that is, that there are machines imported from Japan and from other places, of foreign manufacture, which perform all the functions of the 401, and in addition perform other functions.

Mr. Weinstein: Your Honor, that goes to its accuracy.

The Court: You can raise this point, if you want to, by way of argument.

If this is a motion to strike at this time, to strike this exhibit, Exhibit 146B, your motion is denied, and you have an exception.

I still want some proof as to the source and origin of this [fol. 1520] exhibit presented by the defendant, and I anticipate that that will be presented.

Mr. Klots: We will, sir.

I think it might be appropriate at this time to say also that this exhibit, which Necchi describes as a replaceable cam machine, which it is, is described at the top as a "fully automatic" zigzag machine which has a replaceable cam mechanism.

By Mr. Weinstein:

Q. Miss Hutton, have you ever heard of Mr. D'Amico?

A. Not that I recall. Who is he?

Q. Are you consulted as a matter of practice when Singer files patent applications on new types of sewing machines?

A. No.

Q. You are not. Were you consulted by Mr. Johnson after he filed this patent application and before he filed it?

A. Regarding his patent?

Q. Regarding the mechanism which was the subject of that patent application.

A. We are consulted on development of product, but the status of the patent we have no idea about.

[fol. 1521] Q. Do you know whether or not Singer is

planning to produce a machine which has both cams for the feed and cams for the needle?

A. I do not.

Q. You do not.

The Court: Cams for the what?

Mr. Weinstein: Cams for the feed and cams for the needle, your Honor.

The Court: I cannot get the significance of that. Suppose they are doing that? What significance do you want me to attach to that?

Mr. Weinstein: Your Honor, we have evidence to show that these wonderful fantastic machines, which we think are essentially gimmicks, and we just want to show that Singer isn't terribly concerned with competition of this type, that if this machine was a serious concern——

The Court: If they are gimmicks, then I do not know what this suit is all about.

Mr. Weinstein: We are not talking about the multi-cam machine; the built-in cam machine. We are talking about machines that do everything but take off and fly—the machines which were introduced yesterday.

The Court: Which machines do you mean?

Mr. Weinstein: I am talking about Vigorelli and the [fol. 1522] Necchi Supernova Ultra.

The Court: And you claim that they are inferior machines?

Mr. Weinstein: I think the question of inferiority is a broad question. I claim that they are certainly of no interest to the average home sewer.

The Court: I don't know, but your statement of facts is quite to the contrary. Your statement of facts sets forth, as I recall it, that there is a very substantial number of these imported machines of foreign manufacture which are sold here and bought by the American housewife—I mean that is right in your statement of facts.

It is almost a fact of common knowledge that the Necchi machine and the Elna—you see their signs all over the country almost, advertising signs every place where I have been, on the West Coast to the East—from Maine down to Florida and Louisiana—I have seen the Necchi sign all over.

Mr. Weinstein: Your Honor, Necchi makes numerous machines, I understand.

The Court: All right.

By Mr. Weinstein:

Q. Miss Hutton, I show you Defendant's Exhibit 68 and [fol. 1523] I ask you if you wrote that.

A. Yes.

Q. This is in evidence.

A. Yes.

Q. Does this letter relate to a Vigorelli machine?

A. Yes.

Q. Is it a machine similar to the Vigorelli machine, Defendant's Exhibit 149?

A. Yes.

Q. Is this the identical machine? Would you like to see it?

A. You mean——

Q. No. Is it the identical type machine?

A. Yes, yes.

Q. Did you not write as your recommendation to Singer: "Customer selection of cams"——

The Court: Is this paper in evidence?

Mr. Weinstein: It is, your Honor.

The Court: What is the exhibit?

Mr. Weinstein: Defendant's Exhibit 68.

Mr. Klots: Might the witness have a copy of it before her?

Mr. Weinstein: Yes. I am sorry.

Q. Miss Hutton, I will give you a copy. [fol. 1524] I direct your attention to page 3 of the letter, item No. 11, "Customer selection of cams and assembly of cam units is less desirable than built-in performance."

A. Yes, and that is——

Q. Please answer my question.

The Court: You wrote that, did you?

Q. Was that your——

A. Yes, yes.

Q. Was that your opinion of this machine?

A. Yes, in comparison with the 401 machine.

Q. You mean the built-in cam machine?

A. Yes, because the heading of that whole section is "Areas of deficiencies in comparison with 401 Class."

Q. In other words, you consider a machine with a replaceable cam deficient with respect to a built-in multi-cam machine?

A. I consider this particular design of machine with replaceable cams that must be pre-assembled and that require a possibility of six or more dial settings to engage——

Q. Please——

Mr. Klots: I think she——

The Court: Wait, let her finish.

[fol. 1525] A. —I was evaluating the machine as a usable item, not part by part.

Q. Look at page 1, Miss Hutton. Didn't you discuss the six dial settings in item No. 2 separately and apart?

A. Yes, I enumerated them so that when the machine was no longer in front of us, one reading the report would be able to visualize a bit what we were referring to.

Q. It was your opinion, was it not, that whether or not cams had to be assembled, replaceable cams were less desirable than built-in ones?

A. I did not say that.

Q. You say "Customer selection of cams and assembly of cam units is less desirable than built-in performance."

A. Yes, that is what I meant.

Q. In other words, the combination of both features you think less desirable——

A. Yes.

Q. —than built-in performance?

A. Yes.

Q. Wasn't one of those features the replaceable cam feature?

[fol. 1526] A. Yes, one of them is. No feature stands alone in evaluating a machine.

Q. Is a replaceable cam feature a significant consideration in determining whether or not the element is more or less desirable than a built-in performance?

A. The preassembly of replaceable cams was the consideration.

Q. Less desirable than what?

A. This was a comparison with the 401 machine, with the facility of the 401 machine.

Q. When you speak of the 401 machine you mean the built-in?

A. The built-in mechanism, yes.

Q. I refer you to page 3 again, the paragraph headed "Areas of Novelty and Interest".

Did you write:

"The cross feeding facility is new to the home sewer and the bold decorative patterns as well as the automatic monogramming resulting from this feature will attract and interest any customer. The customer who does not weigh all-over performance against novelty will purchase this machine. In the hands of a strong selling organization this machine would sell. I am inclined to believe that a selling organization trained in 'fast-sell' and spectacular demon-
[fols. 1527-1528] stration would do a better job with this machine than the Singer selling organization. We have established a degree of confidence among customers wherein they trust Singer to provide machines with a wide range of decorative performance and yet maintain superb basic sewing performance."

A. Yes.

Q. Was that your opinion of this machine?

A. Yes.

Mr. Weinstein: I have just one more question, your Honor.

The Court: All right.

Q. In the 401 instruction book, Miss Hutton, it reads:

"World's First Automatic with a Slant Needle and Gear Drive".

It also says, "The only automatic zigzag machine for home use made entirely in America, it outsews all other machines in both straight and fancy stitching."

Is that true?

A. Yes.

Q. It is true?

A. Yes.

* * * * * * *

[fol. 1529] New York, June 5, 1961, 11.00 o'clock a.m.

JESSIE HUTTON resumed.

Cross-examination continued.

By Mr. Weinstein:

Mr. Klots: Before you resume, Mr. Weinstein, may I just put on the record, I understand that certain corrections in the transcript have been agreed upon, and this is a list which I will hand to the reporter (handing).

Q. Miss Hutton, when we closed on Friday, I believe you were examining Defendant's Exhibit 149, which is the Vigorelli Fantasy machine.

I would like to ask you whether or not this machine has built-in cams.

A. No, it has removable cams.

Q. I would again like to direct your attention to Defendant's Exhibit 68, the memorandum which you wrote to Mr. Bruder concerning this machine, and ask you whether or not in commenting upon this machine you anywhere in that [fol. 1530] memorandum used the word "fantastic."

(The witness examines document.)

The Court: Have you looked through it, Mr. Weinstein? Did you find the word "fantastic" there?

Mr. Weinstein: No, I did not, your Honor.

The Court: Then we will concede that it is not there. Why make the witness go through it?

Q. Miss Hutton, did you use any language in this letter which is similar to "fantastic"? Did you in any way describe this *man* as a "fantastic machine" or a machine that does remarkable things?

A. My statement was "The cross-feeding facility is new to the home sewer and the bold decorative patterns as well as the automatic monogramming resulting from this feature will attract and interest any customer."

Q. That is the extent of your comments on the novel features of this machine, is it not, as far as pointing it out as being distinctive from the machines that went before it?

The Court: You are really asking the witness to characterize a written document. The Court has read this document and the Court can form its own conclusions. She does point out that it does present an article of merchandise which might be pushed along by a "fast-sell" operation, and [fols. 1530a-1531] that it might offer competition to the Singer machine, properly promoted or promoted by such a sales organization.

I think you are asking the witness to characterize a written document in evidence and therefore your question is objection able and unnecessary.

Q. Referring now to the Brother Flairmatic, Model 190B which is Defendant's Exhibit 150 in evidence—I will show it to you if you like, but I think perhaps you would remember——

The Court: Maybe you had better put it on the stand here so she will have it before her.

Q. I place it before you, Miss Hutton, and ask you whether or not this machine has built-in cams?

A. Yes, it has.

Q. This machine has built-in cams?

A. Yes.

Q. Are the built-in cams in this machine used to vibrate the needle in order to give a zigzag pattern?

A. Yes.

The Court: I did not hear your answer.

Mr. Klots: I didn't hear it either.

The Witness: The answer is yes.

[fol. 1532] The Court: Isn't there a breakdown of the cam mechanism of this machine in evidence?

Mr. Klots: We do not have a breakdown.

The Court: All right.

Q. Can you show us where, in this machine, the built-in cams are located, Miss Hutton?

A. They are built-in.

Q. Where is the control mechanism on this machine?

A. (Indicating.)

Q. I am sorry.

A. Right here, at the top of the machine (indicating). It is the pushbutton.

Q. How do you switch from one cam to the other in order to change your zigzag pattern?

A. You don't.

Q. You don't. In other words, you do not have a built-in multi-cam mechanism for switching from one——

A. That is not what I testified to. You do not have a built-in cam mechanism for switching from one decorative pattern to another. This machine does make a buttonhole automatically. It controls the bight in order to do so; it controls the feed motion in order to do so; it also controls the direction—well, the direction feed is feed motion; and [fol. 1533] needle position in order to do so.

Q. So we do not have built-in cams for the purpose of giving a decorative pattern——

A. No, we do not.

Q. I see. We do have a built-in cam for the purpose of making a buttonhole.

A. Yes.

Q. Did you not testify that that was the most distinctive feature of this machine?

A. Yes.

Q. And the most significant feature of this machine?

A. That is the feature in which this is different from other machines that have been presented in court.

Q. And it is a significant feature.

A. Yes.

Q. If I may refer you back for just one moment to the Vigorelli Fantasy machine, does that have replaceable cams in it?

A. Yes, it does.

Q. In order to make zigzag patterns with the Brother Flairmatic, what mechanism do you use?

A. It is built-in.

[fol. 1534] Q. No. In order to make zigzag patterns, ornamental zigzag patterns, what type of mechanism do you use in the Brother Flairmatic?

A. You operate the controls manually.

Q. It is a manual machine, manual zigzag machine.

A. In the terminology that we are using, yes.

Q. I put before you Defendant's Exhibit 146, Miss Hutton, and ask you whether or not this is the Necchi Supernova machine?

A. Yes.

Q. Can you tell me whether this machine has built-in cams which are used for the purpose of making decorative zigzag patterns?

A. It has removable cams.

Q. It has removable cams?

A. Yes.

The Court: How do you remove the cam?

The Witness: There is a lever at the back of the machine that throws the cam followers off of the riding position. You lift out a stack of cams. There are pre-assembled stacks. There is also a stud onto which the user might assemble cams in different ways in order to produce different stitches. These stitches are charted in the instruction book, the assem-[fol. 1535] bly of cams on separate studs. They have them both ways.

Q. I put before you Defendant's Exhibit 148, the Kenmore Model 90 machine, and ask you whether or not this machine has built-in cams for the purpose of making decorative zigzag patterns.

A. It does not.

Q. You say it does not. Does it have replaceable cams?

A. It has replaceable cams.

Q. I put before you Defendant's Exhibit 147, the Elna-Plana Supermatic sewing machine, and ask you whether or not this machine has built-in cams for the purpose of making zigzag decorative stitches.

A. It does not.

Q. It does not. Is that what you said?

A. Yes.

Q. Does it have replaceable cams?

A. Yes.

Q. Then of the machines I have shown you this morning none of them have built-in cams, do they?

A. Yes, they do.

Q. Built-in cams for the purposes of making decorative zigzag stitch patterns?

[fol. 1536] A. No, they do not.

Q. All except one have replaceable cams, and that one is a manual machine, is that not correct?

A. Which also makes buttonholes of predetermined length.

Q. Do any of these machines have the feature which would enable the operator to simultaneously combine intelligence from two or more cams in order to make new or additional zigzag patterns?

A. Yes.

Q. Which one is that?

A. All of them.

Q. All of them. They combine intelligence from two cams simultaneously, is that correct?

A. Yes.

Q. Would you explain how that works on the Elna-Plana Supermatic?

A. The Elna has, I believe I testified, cam control feed and cam control needle. When stitches are made employing both of these motion controls, two followers are riding on two separate cams which are combined in a single unit and functioning simultaneously.

Q. Do any of these machines——

Mr. Klots: If your Honor please, it is a little difficult for [fol. 1537] us to hear. I wonder if Mr. Weinstein would stand back a little further.

The Witness: I will try to talk louder.

Q. Do any of these machines have a feature in them which enables you to simultaneously combine intelligence from two or more cams for the purpose of vibrating the needle? In other words, the added intelligence of both are directed toward vibration of the needle.

Mr. Klots: If the witness would like to look at the machine again, your Honor, I suppose you would have no objection to that?

The Court: No.

Q. Would you like me to put those machines up there?

A. My reason for hesitation is that this is quite a technical question. I am not positive of the entire mechanical aspects of the cam control needle position. It does limit and determine the point of origin of the swing of the needle. Technically I presume it would be termed as controlling the swing of the needle.

Mr. Klots: I think the answer is obvious, your Honor, that she is just presuming and guessing about this engineer-
[fol. 1538] ing matter.

The Court: Yes. Apparently she states she cannot answer it. She does not feel qualified to answer it.

That is what your answer is, in substance, as I take it?

The Witness: Yes.

Mr. Klots: Then may the last answer be stricken?

The Court: No, we will let it stand.

[fol. 1539] Q. Did you not testify, Miss Hutton, that certain of these machines have three types of cam controls and that one of these cams controls the feed of the machine?

A. Yes.

Q. And that another of these cams controls the pattern and the third controls the amplitude of the needle?

A. I didn't use that terminology, and I don't quite understand what you mean by it.

Mr. Weinstein: Strike that last question, please.

Q. In your opinion, Miss Hutton, was the outstanding feature of the Model 319 Machine a series of five cams which were built-in and engaged by lifting levers at the top of the sewing head?

A. That was the outstanding feature of the 319 in characterizing it as being different from the 306 machine.

Q. And the 306 machine had replaceable cams?

A. Yes, it did.

Q. Were you consulted by any member of the Singer organization concerning Singer's decision to drop the 319 machine in the United States? By "drop" I mean cease production and sale in this country.

A. If one considers adopting another model machine to
[fol. 1540] imply that a previous model should be dropped, I presume it can be inferred that I advised dropping the 319. However, the advice was an affirmative advice in urging the adoption of the 401 which was then termed the 282.

Q. Was the 319, prior to the adoption of the 401, the only multi-cam machine in Singer's line?

A. We are getting very close to dates now. To my best recollection the 282 was adopted as a machine to be manufactured before the 319.

Q. Will you describe the 282 machine, Miss Hutton.

A. The 282 was the experimental number used to describe what was introduced to the public as the 401. The 282 was a job number, an experimental number.

Q. Was not the invention and the availability of the 401 a significant factor in the decision to drop the 319 machine from Singer's line?

Mr. Klots: I don't know what you mean by that.

Q. Can you answer that question?

A. I am not qualified to answer that, no.

Q. You testified just a few moments ago, did you not, that in effect your suggesting that the 401 machine be adopted was tantamount to a suggestion, perhaps, that the 319 be dropped, did you not?

[fol. 1541] A. Yes, but *my* the same token I am not——

Q. Please answer the question. Did you testify in substance to that?

A. May I have it again, please.

Q. I asked you whether or not you just testified a few moments ago to the effect that you considered your suggestion that the 401 or the 282 experimental which turned out to be the 401—whether or not your suggestion that the 401 be adopted was tantamount to suggesting that the 319 might be dropped from the Singer line of machines.

A. I am very sorry. I am lost.

Q. All right. I asked you before whether or not you ever suggested the 319 be dropped, and you said to me, and I may not be quoting you exactly, and please correct me if I don't quote you properly, that if you consider my suggestion that the 401 be adopted was equivalent to a suggestion that the 319 be dropped, then yes. Did you testify in substance to that?

A. Yes, in substance, yes.

Q. That is true, is it not, that in effect your suggestion that the 401 be adopted was a suggestion that the 319 be dropped?

A. Not necessarily.

[fol. 1542] The Court: No, no. You don't place the interpretation on it that the witness apparently desired to have placed on her comments. In substance she says she at no

time recommended that the 319 be dropped, but that someone might infer from that, without reason, that because she advocated the issuance or the marketing of the 401, that therefore it might be said that she took the position that the 401 should be marketed to the exclusion of the 319, but she didn't want to give that picture.

Is that the way you wanted your testimony to be understood?

The Witness: Yes.

The Court: That's the way I understood it.

Mr. Weinstein: As I understood her testimony, your Honor, there was no suggestion that it would be unreasonable for anybody to infer that the 319 should be dropped because the 401 was being adopted.

Q. Do you personally train, or are people trained through people acting under your supervision in the sale of Singer sewing machines?

A. The sale of sewing machines takes in many aspects of a company which merchandises. Our people train others in knowledge of product and presentation of product.

[fol. 1543] Q. To the consumer? Presentation to the consumer, Miss Hutton?

A. Presentation to the consumer and presentation at different levels to a greater portion of the organization.

Q. In training your personnel to distinguish between the 401 and the 403 machine, when speaking to the consumer, what features are emphasized in the 401 machine as opposed to the 403 machine? What is the sales pitch, Miss Hutton, that is to be used in trying to sell the 401?

A. Do you mean in selling one in competition with the other?

Q. That's correct.

A. There is an obvious comparison of the different means of achieving the same thing, and, as I testified before, some people prefer one method of achieving all the operations of sewing and some prefer another method of achieving these operations.

Q. What reason do you give the customer in order to induce him to spend the additional $60 to buy the 401 machine? When he says to you, "What am I getting for my extra $60?" what answer do your sales people give him or [fol. 1544] should they give him?

A. "Let me sit you down and show you both of them." We give the customer an opportunity to use each machine, if she so desires.

The Court: You mean your approach is to let the merchandise sell itself?

The Witness: No. The approach is to let the customer have an opportunity of feel and use, yes.

Q. Not every customer who buys a sewing machine operates a sewing machine, does he, Miss Hutton?

Mr. Klots: I did not hear that question.

Q. Does every customer who buys a sewing machine——

The Court: Not every purchaser is able to operate sewing machines. I suppose that is so. Like, for instance, you might want to buy a sewing machine as a gift for your wife or your mother-in-law.

The Witness: You would be surprised at how many men will sit down and operate a sewing machine, though.

The Court: And you would be surprised at how many won't and don't.

Q. If a customer were to come in to you, Miss Hutton, and show you your ad, which is Plaintiff's Exhibit 200, that full-page ad showing the 401, the 403 and the 404, and say to you, [fol. 1544a] "I want the fully automatic machine as opposed to the automatic machine. What am I getting for my extra $60 when I buy the fully automatic machine?" what answer do you give him?

A. Well, obviously we describe the means for dialing stitches, the built-in cam mechanism.

[fol. 1545] Q. And that is the feature that distinguishes the 401 from the 403, is it not?

A. Yes. That is obvious.

Q. Miss Hutton, you testified that one of the features that you show the customers on your 400 series machines is the elevator throat plate.

A. Yes.

Q. Did you state that the elevator throat plate was a desirable feature because a woman is relieved of the obligation of using a screwdriver on her sewing machine?

A. That is one of them.

Q. And prior to the advent of the elevator throat plate was it not necessary to use a screwdriver in order to lift the throat plate?

A. On Singer machines, yes.

Q. Did you not testify that in order to place the manual zigzag attachment on the Singer straight stitch machine you had to use a screwdriver in order to tighten the lock screw, the lock nut?

A. Yes. It is advisable, unless you have very strong fingers.

Q. It is advisable unless you have very strong hands?

[fol. 1546] A. Yes. However, the screws are located differently and the fabric is not flowing over the top of the screw on the presser bar, and the screws are of entirely different size and different dimension.

Q. You testified that the most significant feature of the Brother Flairmatic was the built-in buttonhole maker, is that not correct?

A. That distinguishes it from the others.

Q. Viewing all these factors, isn't it true that there is a class of women that want the most automatic type of thing in the sense that they don't want to bother with screwdrivers, they don't want to bother with putting parts in and out and making other mechanical adjustments if they don't have to?

A. I don't understand your terminology of "class." If you mean some women will buy that particular machine, obviously, yes, because it is merchandised.

Q. In your experience with the Singer Company and as head of the educational department, haven't you found that it is desirable to design products with the woman in mind who does not wish to go into mechanical operations, who does not want to use screwdrivers and replace parts and go into other mechanical operations? Isn't that a con-

[fol. 1547-1548] sideration?

A. I think that is a modern trend in every industry.

Q. You think that is a modern trend?

A. To give as much convenience.

Q. And there are some housewives that like to follow the modern trend, isn't that true?

A. Yes, and sometimes without knowing why.

Q. But they follow it anyhow, the most fully automatic, isn't that so?

A. Yes, yes.

* * * * * * *

[fol. 1549] Redirect Examination.

By Mr. Klots:

Q. Miss Hutton, at page 1507 and 8 of your cross-examination testimony the Court asked you the following questions and the following answers were given:

"The Court: Does either one of these two machines, the 401 or the 403, perform a function that cannot be performed by both?

"The Witness: Does either one perform a function that cannot be performed by both?

"The Court: Yes, ma'am.

"The Witness: Yes.

"Q. What is the difference?

"A. The 401 can make stitches that we have termed or described as variation stitches and combination stitches.

"Q. Is that because it has a built-in mechanism from which you can select information from two cams [fol. 1549a] simultaneously?

"A. Right."

What I want to ask you is, having regard for that testimony, did you mean by that testimony that the 403 could not make patterns that can be made on the 401 with the two cam followers?

A. No, I did not.

[fol. 1550] Q. Now, isn't it a fact that some of the cams that are furnished as a regular thing with the 403 or can be purchased for the 403, make the same pattern that some combination of the two cam followers on the 401 make?

A. Yes. In fact, any stitch made on the 401 can be made on the 403 with a cam designed to do so and through the operation of a single cam follower.

Q. I show you this paper and ask you what this is.

A. This is a chart prepared to compare the stitches made on the 403 with the existing discs against the 401, to docu-

ment the coding of those stitches for easy reference. This is a chart that we supply to our organization and to schools, especially schools that are equipped with both the 401 and the 403 machines.

Mr. Weinstein: We have no objection.

The Court: Received.

(Received in evidence as Defendant's Exhibit 151.)

Q. Referring to Exhibit 151, I note on the left-hand side is a column which I gather describes whether the particular pattern is made on the 401 by a disc or by a combination pattern or a variation pattern or a primary pattern. What is meant by those terms; what is meant by a primary pattern? [fol. 1551] A. A primary pattern is where one cam follower is operating on a metal disc, a built-in disc.

Q. What is a combination pattern?

A. A combination pattern is made when both cam followers are operating on a metal disc or one is operating on a metal disc and the other on a replaceable disc. There is one more point.

The red lever is at 3.

Q. Then there is another classification here which is entitled "disc". Does that mean those particular patterns are made on the 401 by this removable disc that can be put on the built-in cam?

A. That's right.

Q. Then we come to a variation pattern; what is that?

A. A variation pattern is similar to a combination pattern in every respect except the red lever is not set on 3, it is set elsewhere.

Q. The righthand column represents the number of the disc that is supplied with the 403 that will make a similar pattern, is that right?

A. That's right.

Q. I call your attention to the fact that disc No. 6, which [fol. 1552] makes a scallop pattern on No. 403, that that pattern can be made by a combination pattern on the 401; is that right?

A. That's right.

Q. The same pattern?

A. Yes.

Q. The scallop pattern?

A. Yes.

Q. I call your attention to the fact that a combination pattern may be made on disc 12, the Domino pattern on the 403 which is made by a combination of two of the built-in cams on 401; is that right?

A. That's right.

Mr. Klots: And I think the rest of it is apparent from the chart, your Honor.

Q. At page 1389 of your cross-examination, the Court asked you these questions and you gave the following answers:

"The Court: Do you still sell or does Singer still sell in the American market a straight stitch machine without a multiple machine-carried cam? Do you sell the old-fashioned sewing machines any more?

"The Witness: Yes.

"The Court: The kind that mother used to use?

[fol. 1553] "The Witness: Yes, sir, absolutely."

I ask you whether or not a zigzag attachment can be put upon the kind of machine that mother used to use.

A. Yes, it can.

Q. At page 1403, I want to clear up one thing. You were asked this question at the top of the page:

"Do you sell a straight stitch machine which does not have a zigzag attachment?"

You answered: "Yes."

Did you mean by that that Singer sold a straight stitch machine which could not take a zigzag attachment?

A. I interpreted "does not have" as meaning not having free with the machine, without an additional purchase.

Q. As part of the standard equipment?

A. As part of the standard equipment, yes.

Mr. Klots: I have no further questions.

Recross-examination.

By Mr. Weinstein:

Q. I show you Defendant's Exhibit 151, Miss Hutton. Mr. Klots directed your attention to disc 6, the scallop pattern. May I ask you why there is a line drawn between the

two scallop patterns, a vertical line drawn through the two scallop patterns on this exhibit?

[fol. 1554] A. Yes. To distinguish what is made on the 401 on this side, and what is made on the 403 on this side.

Q. I don't quite understand what you mean by "on this side" and then "on this side."

A. On my left we have a picture of the 401 machine. We have a column describing the setting on the 401 machine, and we have the illustration of the stitch.

On the right we have the 403 machine picture and a column indicating the discs and a column indicating the stitches.

Q. There is also a line separating Ball Patterns and Icicle Patterns?

A. Yes.

Q. Also fagoting patterns?

A. Yes.

Q. There is no other line separating any other pattern on the machine, although you can make both of those patterns on each of the machines, is that not true?

A. Yes.

Q. What is the significance of the line?

A. I don't think I follow you, because it is for separation.

Q. Isn't it true that the scallop pattern made on the 401 [fol. 1555] is different from the scallop pattern made on the 403?

A. Yes, there is a slight difference. I think you will recall that these discs for the 403 are all usable with the 401. The stitch that results from the combination pattern has a slight difference in its configuration. For practical purposes, it is the equivalent in use, in operation, in purpose.

Is that what you are driving at?

Q. The chart indicates there is a difference in those stitches?

A. Yes, it is an acknowledged difference.

Q. You spoke of the term "disc" in testifying about this document. You meant cam, did you not?

A. For public and commercial usage we call these fashion discs, the things we have been calling in court cams, a cam being a more technical term. That is the only difference.

Q. What is the promotional reason for trying to avoid a technical term?

A. That is done in everything one sells or buys.

Q. What is the reason for it, Miss Hutton?

The Court: I suppose it is psychological. What do you want to make out of this witness, a sales expert, a psycholo-
[fol. 1556] gist of sales? I suppose it has a greater appeal to the women.

The Witness: A cam does not have appeal to women.

Q. Because it is a technical term?

A. Yes.

* * * * * * *

CHARLES F. BRUDER, called as a witness by the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Klots:

Q. Where do you reside?

A. Ridgewood, New Jersey.

Q. Are you an officer of The Singer Sewing Machine Company?

A. Yes, sir, I am vice president and a director of The
[fol. 1557] Singer Sewing Machine Company and a director of The Singer Manufacturing Company.

Q. The Singer Manufacturing Company is the company which makes the machines and The Singer Sewing Machine Company is the one which sells them?

A. Correct.

Q. As a vice president of the Singer Sewing Machine Company, what is your specific job?

A. I am in charge of the Consumer Products Division of The Singer Sewing Machine Company.

Q. What is the Consumer Products Division, what does it do?

A. We are responsible for the merchandising of consumer products in the United States and Canada.

Q. When did you first enter the Singer organization?

A. In 1932.

Q. Will you tell us what were the various jobs you have had with The Singer Company.

A. I started as a salesman in 1932. I subsequently became an assistant manager; manager of a store; district manager in charge of a group of seven or eight stores; sales supervisor, which is a job where you are responsible for sales promotion among a larger group of stores, perhaps 30 or 40. [fol. 1557a] I was then a general agent, which means I was entirely responsible for one of the larger company territories, supervising all of the activities for 90 or 100 stores. [fol. 1558] Q. For awhile did you sell something else besides sewing machines?

A. You remember a little incident occurred in December, 1941, which resulted in the discontinuance of the manufacture of household sewing machines.

Q. I assume you are talking of Pearl Harbor and the second World War?

A. Yes, sir. Shortly after that, I was transferred to the Diehl Manufacturing Company, the electrical division of the Singer Manufacturing Company, which had just completed a new plant in Somerville, New Jersey, where our work force was stepped up from some 900 to a peak of 4,000 during the war years, and where we were entirely on war work.

Q. When did you come back to selling sewing machines?

A. I remained with the Diehl company after the war and in 1948 was made a vice president in charge of sales for Diehl. Our primary products being electric motors, fans, portable electric tools and so on. I was transferred back from Diehl Manufacturing Company as vice president in charge of the consumer products division on October 1, 1953.

Q. Since October, 1953, you have been vice president in [fol. 1559] charge of the consumer products division of the Singer Sewing Machine Company?

A. Yes, sir, that's correct.

Q. What are your duties in that office, in that job?

A. I am responsible, aided of course by a staff, for the marketing of all of our products in the United States and Canada, for the supervision of some 1800 retail houses, for the advertising and promotion of those products, the pricing of them, everything that has to do in the broadest sense of

the term with the marketing of our products in the United States and Canada.

Q. Are you talking about household sewing machines?

A. Consumer products. Of course, our primary consumer product is the household sewing machine.

Q. What type of promotion work did you do, for example?

A. Of course, among our direct promotional work with the public, one of the outstanding important things that we carry on is the company advertising program. In addition to that, of course, we do a great deal of promotional work with our own organization. We also do a great deal of pro- [fol. 1560] motional work in cooperation with publications, with such organizations as the Girl Scouts, the Granges, the 4H clubs, women's clubs, schools, colleges. We frequently say, Mr. Klots, that our business is home sewing.

Q. Not just selling sewing machines?

A. Not just selling sewing machines.

Q. What about the schools and colleges, do you carry on any educational work there?

A. Yes, Mr. Klots, it is a very important part of our educational and promotional activities. I think Miss Hutton has already testified to some of the things we do in that area.

Q. Tell us whether or not as part of your job you ascertain what the consumer wants in the way of household sewing machines and what they use sewing machines for.

A. Naturally, one of the most important functions in the overall marketing concept is the determination as to what the consumer wants in a product or what we might devise that we could persuade the consumer she wants.

Q. How do you keep abreast of that?

A. Of course, we have built in to our organization a great [fol. 1561] natural advantage, the fact that we retail our merchandise through our own stores, our own sales organization, the fact that we give considerable instruction in the use of our product, the fact that we have our own servicemen calling at homes, servicing machines, gives us a built-in means of maintaining vast numbers of daily contacts with the public. Through this organization, which is in the field, in the trenches, so to speak, the information which they gather of the public reactions, public likes, public dislikes, preferences are naturally brought back through channels. In addition to that, of course, we use all of the common de-

vices of marketing research, depth interviews, all of the techniques that are commonly used by market men in all fields.

Q. Tell us whether or not it is part of your job to keep track of what your competitors are doing in selling?

A. That is all part of a job of watching our market.

Q. Have you spent any time yourself traveling in the field since you have occupied this job of vice president?

A. I don't believe that any man under our organizational setup can properly carry out the job that I presently occupy [fol. 1562] unless he does spend a considerable portion of his time in the field. There is no substitute for firsthand contact with the organization, and I spend approximately 35 per cent of my time in the field every year.

Q. I think you have already said that you are in charge of Singer's advertising program?

A. Yes.

Q. Do you have anything to say with regard to the development of new machines?

A. Quite naturally again, in a modern marketing organization, the product must be consumer oriented, and the marketing organization is in the best position to advise on customer orientation, likes, preferences, so naturally we have a voice in the development of all our products.

Q. Mr. Bruder, the record in this case already shows that there are different devices employed by different manufacturers of sewing machines which enables the machine to make a zigzag stitch. It shows that there is a manually operated device, replaceable cam device, built-in multi-cam device, a zigzag device that may be attached to a machine that is otherwise used for straight stitching.

[fol. 1563] Q. In marketing machines, do sellers carry these four different devices and divide them into categories?

A. No, it is all one market.

Q. Will all the machines that make a zigzag stitch also make a straight stitch?

A. Yes, sir.

Q. Have you had an opportunity, Mr. Bruder, to observe whether or not all straight stitch machines now being sold can take a zigzag attachment?

A. I have had a great many opportunities. I have traveled the length and breadth of this land and in every respect I

am up to date on the market and what is being offered in the market. All household sewing machines currently being sold in the United States will take a zigzag attachment.

Q. Does that apply to machines made in Japan, straight stitch machines made in Japan?

A. Yes, it does, sir.

Q. The record shows already that Singer itself makes different machines that carry different devices that may be used to sew a zigzag stitch. There is the 401 which uses a built-in multiple cam device, the 403 with a replaceable cam device, and there is the 404 which makes a zigzag stitch with the attachment, does it not?

[fol. 1564] A. That is correct.

Q. Before the 404, did Singer have a machine that was sold with an attachment?

A. Yes, we had a 301 slant needle machine which was sold with an automatic zigzag attachment and, of course, we also had straight needle or automatic zigzag attachments for sale to people already owning all the machines.

Q. I show you this copy and ask you if that is an advertisement which Singer had published in the year 1957?

A. Yes, it is, sir.

Q. And that is an advertisement of what particular machine?

A. This is an advertisement on our famous 301 slant needle Singer with the automatic zigzag attachment, so it can do zigzag stitching automatically.

Mr. Klots: I offer it in evidence.

Mr. Elkins: No objection.

The Court: What is the purpose of this?

Mr. Klots: The advertisement shows that they advertised machines way back at that time, a straight stitch machine that carried a zigzag attachment.

[fol. 1565] The Court: All right.

(Defendant's Exhibit 152 received in evidence.)

Mr. Klots: One thing it says is "Now the famous slant needle Singer does zigzag stitching as well as straight stitching", and another "comes complete with exclusive Singer automatic zigzagger."

By Mr. Klots:

Q. Singer makes other machines that will do zigzag stitching with attachment or otherwise?

A. Yes, sir.

Q. These machines, particularly the 401, 403 and 404, I ask you whether or not it is a fact that all of these different machines could be used in the household to make zigzag stitching?

A. They can be and they are.

Q. Does that apply to both functional and ornamental zigzag stitches?

A. Both functional and ornamental.

Q. Mr. Bruder, the record in this case shows that the 401 machine is the largest seller of all the Singer machines in recent years, and I will ask you if you will explain the reasons for this.

A. I will be very glad to, sir. In the first place, you must bear in mind as background, I might say, to what I would [fol. 1566] like to tell you, that traditionally the Singer organization has always been able to obtain a very substantial portion of the sales in the highest priced machines in the line. That is an historical fact going back ever since I have been in the business. Singer has a reputation for quality. I think it is quite natural that people therefore are going to be interested in the best machines which Singer offers. Traditionally, we have that background.

When the 401 was first brought out, it represented a completely new and different sewing machine in our line. It was not what is sometimes called a Detroit face lifting job. It was a completely new and different machine, offering, as we said, 24 fabulous features, and that machine had placed in back of it the largest Singer advertising appropriation, the largest Singer appropriation for general promotional purposes that we had ever put behind the launching of a new model machine. Quite naturally, we would expect to obtain sales result as a result of that kind of a major effort. You must bear in mind, too, that part of what I just said about traditionally having sold a big portion of our sales in the high end of the line that the salesman is rewarded accord- [fol. 1567] ingly. All of our sales people work on some kind of a commission incentive and the commission on the highest priced machines naturally puts more dollars in the sales per-

son's pocket. You must also bear in mind that the 401 was introduced on the American market in June, 1957, and that it was on the market for almost two years, 20 months, before the 403 was introduced in April of 1959. The 404 was introduced in February of 1959. So our whole organization for over a year and a half, supported by the advertising program and the promotion efforts, which I have talked about, were schooled and drilled and learned to love to sell the 401.

[fol. 1568] Q. I ask you if you have prepared at my request the figures from the books of the Singer Company as to the amount that was spent in advertising, in the first place, the 401 machine, and also the 403 and also the 404.

Does that represent the amount that was spent in those various years in advertising those machines respectively (handing witness)?

A. Yes, sir. This is a tabulation which I had prepared for you from our records.

Mr. Klots: I offer it in evidence (handing).

Mr. Elkins: If your Honor please, may I ask what the source of these figures is; and if they are, as I presume, tabulations, bills and so forth from advertising companies, why this seems to be a secondary piece of evidence.

The Court: It may not be if it is part of the office records regularly kept and maintained by the Singer Company.

Are these figures from the records of the Singer Company regularly maintained by it in the conduct of its business?

The Witness: Yes, your Honor, they are.

The Court: You do not want the actual books brought in, [fol. 1569] do you?

In the light of that answer, I take it your objection is withdrawn.

Mr. Elkins: Are they kept in this form or some other form? If your Honor please, I understand that opposing counsel——

The Court: We do not want to have a lot of books here.

Are these the extracts taken from the records regularly maintained?

The Witness: Yes, your Honor.

The Court: And you have verified this statement against those books and records?

The Witness: I have, your Honor.

The Court: Regularly made and maintained?

The Witness: Yes, your Honor.

The Court: Received in evidence, objection overruled.

(Marked Defendant's Exhibit 153 in evidence.)

The Court: If you want those books we will have them produced, Mr. Elkins, to cross-examine the witness.

. . . . . .

[fol. 1570] By Mr. Klots:

Q. Do you have figures there which would show the totals, Mr. Bruder?

A. Well, I have them by years.

Q. Yes. How much was spent, for instance, the year 1957 on advertising the 401?

A. Well, the year 1957 was our launching year.

The Court: The break in year of the new product.

The Witness: That is right, sir.

[fol. 1571] The Court: It is natural to spend more money then.

The Witness: That is right. You use that to give it its initial impetus. You put a very large effort in to launch it, and we spent $2,145,000, in round money, in just launching the machine in 1957.

We spent 1,270,000 in 1958, and we spent 1,343,000 in 1959, and 1,399,000 in 1960.

So actually our level in the three years following the launching is substantially the same, and actually slightly higher in 1959 over 1958, and 1960 over 1959.

The Court: Your budget called for about one million three in subsequent years.

The Witness: You have it exactly, sir.

Q. Now, Mr. Bruder, I show you this document and ask you what that is (handing witness)

A. This was one of the first advertisements on the 401 when the machine was launched in 1957.

Q. That is an exact copy, of the color and everything?

A. That is an exact copy of the advertisement that ran in the Ladies Home Journal, McCall's, Good Housekeeping, Woman's Day, and so on.

[fol. 1572] Mr. Klots: I offer it in evidence (handing to Mr. Elkins).

(Marked Defendant's Exhibit 154 in evidence.)

By Mr. Klots:

Q. Now I will also ask you what this sheet is (handing witness).

Is that another advertisement that was issued shortly after the 401 came out?

A. This is another photostat—or this is a photostat of another advertisement that we used early in 1958 for the 401.

Mr. Klots: I offer it in evidence (handing).

Mr. Elkins: In relation to that exhibit, it seems to have typing on it. It is a printed advertisement with typing on it. I do not understand the typing.

Is that part of the exhibit?

Mr. Klots: Yes. I will ask the witness what the typing on the bottom of this exhibit means (handing).

The Witness: This is merely a record of the magazines in which this advertisement was run.

Mr. Elkins: No objection.

(Marked Defendant's Exhibit 155 in evidence.)

[fol. 1573] By Mr. Klots:

Q. I have one other ad that came out in 1957, Christmastime, after the launching of the 401 machine.

Is this a copy of an ad that was published about Christmastime (handing witness)?

A. Yes. This is a color proof of an ad which we published in many of the Christmas issues, the December issues which are usually out late November in the magazines, listed in the box here at the bottom.

Mr. Klots: I offer it in evidence (handing to Mr. Elkins).

Mr. Elkins: No objection.

(Marked Defendant's Exhibit 156 in evidence.)

By Mr. Klots:

Q. I notice, by the way, Mr. Bruder, in this last exhibit there are various other machines which are advertised on the same sheet as the 401—pictures, to be sure.

What is this machine, the upper left, one of those four small pictures, "Popular slant needle Singer"?

A. That is the 301.

Q. I see. That is the one we were talking about previously?

[fol. 1574] A. With the zigzag attachment, yes.

Q. These machines will take zigzag attachments?

A. Yes.

Q. Now if you will look at the original launching ad, this big one, which is Exhibit 154, I notice in the first place that it is named "Slant-O-Matic".

What is the significance of that word? Why is the word "Slant" in there?

A. Well, the significance of that name, Mr. Klots, is that for the first time a sewing machine was being placed on the market which incorporated both the slant needle and swing needle feature in one machine, hence the name of the machine to identify it and give it that distinctive term.

Q. Now then it says—and I quote from this Exhibit 154 "This is the Singer Slant-O-Matic. Exicitingly new. New in its almost unbelievable ease of operation . . . new in the fine, sure beauty of its stitching . . . new in introducing convenience features never before built into a machine:"

I ask you, sir, what was meant by "almost unbelievable ease of operation", and what was meant by "introducing convenience features never before built into a machine"?

[fol. 1575] A. Well, Mr. Klots, perhaps I should start by saying that while there may be a certain amount of what is commonly called advertising puff in the copy that goes with that, I honestly believe that the claims made for the machine are based in fact. Looking at this machine, the first attractive feature, and the one that gave it its name, is the combination of the swing needle with the slant needle.

Q. What is the advantage of the slant needle?

A. Mr. Klots, the slant needle was first actually developed and used on some of our industrial sewing machines. Now while it may be true that you can develop a so-called feature that lends itself to merchandising, to the average consumer, the industrial sewing machine buyers are a far more sophisticated lot. It is their business to make sure that the equipment they are buying does the best possible job for them.

The slant needle feature was first developed and used and proved of practical value on industrial sewing machines.

We then incorporated it in our 301 where it was supported by a great deal of advertising and promotion. It was popularized as the machine at which you sit better, see better, sew better.

[fol. 1576] Q. What is the point—so that you could see the stitching better?

A. It gives the operator of the machine a more comfortable posture while she is still able to visualize her work at the point where the needle enters the cloth. The rake of the needle bar moves that point slightly over an inch closer to the operator than a conventional straight needle bar.

Q. All right. You were going to tell us what was meant by the "unbelievable ease of operation" and "convenience features never before built into a machine".

A. Well, I think as has already been brought out, but it certainly bears reemphasizing, the position of the rotary hook with the bobbin in front of the needle bar, with the fixed bobbin case so that changing the bobbin is merely a matter of pulling a slideplate towards you, removing the bobbin and dropping another one in, certainly contributes to the ease of operation of this machine.

[fol. 1577] Q. And there are little pictures of the slant needle and also dropping in the bobbin on the slant sheet, are there not?

A. That's correct.

Q. And there is another picture there. What is that?

A. There is a picture here which shows that in addition to the slant needle—or it says that in addition to the slant needle that this machine has a gear motor drive.

Q. Yes.

A. This again was another first—the first time a swing needle machine had a gear motor drive with a matched speed controller, which gives this machine the best control of a total range of speeds of any swing needle machine that we have ever seen.

Q. All right Give us some more.

A. This definitely contributes to ease of operation for the operator.

Q. Yes. What else?

A. This machine, again, first, was made completely of

diecast aluminum housings, thereby greatly reducing the weight of this machine. At the same time your diecast aluminum housing gives you clean surfaces and contours [fol. 1578] which are readily kept clean compared to cast iron, for example, and when one bears in mind that approximately half of the household sewing machines sold in the United States are so-called portables, the weight of the machine becomes a very important factor for most women. Even where the machine is used in a cabinet, the weight of the head has a great bearing, of course, on the ease with which the head can be raised and lowered in the cabinet.

The machine offered for the first time the elevator throat plate, and again, as I believe has been brought up before, this throat plate can be elevated, depressed or removed and replaced with another throat plate without the use of a screwdriver and removing two screws.

Q. What about the flip-up pattern chart and dial for changing patterns?

A. Naturally the eye-level stitch selection chart and the dial for selecting the stitches was a feature of this machine which lent itself to advertising and promotion—lends itself to sales talk, lends itself to a glamorous, attractive demonstration, and naturally it has been pushed as one of the many fine features of this machine.

[fol. 1579] Q. Did you mention micro-stitch length control?

A. That, again, was another first. We developed what we called the micro-stitch length control, which particularly in the area of fine stitching, where you want to pack a great many stitches in a square inch, lends itself to very precise adjustment.

I think there has been earlier discussion about getting pattern density. We believe that this microstitch control makes it easier for the operator, contributes to her ease of operation in getting the exact stitch length that she wants.

Q. What about the dial tension? How do you go about that?

A. We believe that our dial tension is superior to any tension used on any sewing machine on the market today.

There are other tensions which I think, as has been brought out, do not protrude as much from the machine, but I know of no tension that gives better control of the thread than the Singer single-turn dial tension. There are

other features which contribute, such as the safety thread cutter, the threading chart which is in the face plate of the machine.

This all contributes to ease of operation.

[fol. 1580] The claims made in this ad were legitimate claims, bringing out a number of the wonderful features of this fine machine.

Q. I call your attention to Exhibit 155, which is the other ad, and I ask you if that does not list on the righthand side all of these various features that you have mentioned, or most of them (handing).

A. I think it mentions all of the features that I have mentioned—and there are others, of course, that we could talk about, but space limitations sometimes prevent that.

Q. I notice on Exhibit 155 that there is a list of features on the righthand side. The top one listed is "Only zigzag sewing machine with Slant-Needle for better vision, precise stitching."

The next one is "Exclusive 'drop-in' bobbin in front of needle"—you mentioned that, didn't you?

A. Yes.

Q. The next one in the list of "Fixed bobbin case—prevents dropping, chipping." Did you mention that?

A. I think I spoke of the fixed bobbin case and the drop-in bobbin together.

Q. The next one is "Exclusive elevator throat plate raises by finger-tip control—no feed to drop for darning and [fol. 1581] embroidery, no tools needed for cleaning, superior fabric handling."

I think you mentioned the throat plate, did you not?

A. Yes, sir.

Q. And the fifth one on the list of "'Tune-in' knob for instant change from straight stitching to hundreds of decorative stitches, buttonholing, overcasting, zigzag seaming."

I think you mentioned that.

A. Correct.

Q. And so on—and there are other things that you mentioned?

A. Right, sir.

Q. Now having listed these features, Mr. Bruder, what would you say were the most important of these features from the housewife's point of view?

A. I just realized I did not list the most important feature of all—the most attractive thing about this sewing machine, the most valuable feature is that name right there, "Singer".

Q. Yes, we all know that.

A. That's true.

* * * * * * *

[fol. 1582] Q. What would you say are the two most important features about this machine?

A. Certainly the most important feature is the combination of the slant needle-swing needle from which the machine took its name Slant-O-Matic.

Q. Yes.

A. And coupled with that is the second most important feature which I would say is the convenience of the drop-in bobbin, the full rotary hook, which means you can run speeds up to 1400 stitches per minute, with almost complete lack of vibration and convenient access to that bobbin at all times.

[fol. 1583] Q. Mr. Bruder, in your experience with the selling of sewing machines in the market did you ever hear anyone claim that there was a separate slant needle market?

A. No, sir, I never have.

Q. Did you ever hear anyone claim that there was a separate "drop-in bobbin in front of the needle" market?

A. No, sir.

Q. I have two other ads, two beautiful ladies here, that I think we might introduce, and just to bring this advertising up to date, I ask you what this sheet is (handing).

A. That is one of the many, we think, attractive ads which we ran in connection with our 401 Slant-O-Matic where we stress, as you will see from the copy of the ad, the advantages of zigzag sewing, and we try to glamorize it and make it appealing and dramatic and attractive to the average housewife through the use of an attractive model.

Q. What year was that?

The Court: That also helps appeal to the husband of the housewife, too.

The Witness: It doesn't hurt any.

Q. What year was that published?

[fol. 1584] A. This ad was run last year, summer and fall of last year.

Mr. Klots: I would like to offer this beautiful lady in evidence.

Mr. Elkins: No objection.

(Received in evidence as Defendant's Exhibit 157.)

Q. Now I would like to show you this and ask you if this is another advertisement that was published in the fall of 1960 in the magazines indicated.

A. Yes, this is another one similar to the one that you just introduced, again featuring a very attractive lady up against an outsized 401 Slant-O-Matic. "What is the Newest Slant off Holiday Sewing?" Perhaps you don't regard it as a very good pun of words, but the copywriters liked it.

Q. She is in a mauve dress, I believe.

A. Oh, yes.

Mr. Klots: I offer that in evidence.

Mr. Elkins: No objection.

(Received in evidence as Defendant's Exhibit 158.)

* * * * * * *

[fol. 1585] Direct examination continued.

By Mr. Klots:

Q. We have been talking, Mr. Bruder, about this 400 line or series, I think you call it, of machines. The 401 is the highest priced of these machines, is it not?

A. Yes, sir.

Q. And it was the first one to come out?

A. Yes, sir.

Q. And that was with the built-in cams. And the 403 is the one with the replaceable cams, and the 404 is the one with the zigzag attachment.

A. Yes, sir.

Q. It has been pointed out that the 403 incorporates many of the features found in the 401 machine, including the slant needle, the numerous replaceable cams that make a variety of zigzag lines, et cetera, that it is really a multi-cam

machine although the cams are not built in. How do you [fol. 1586] account for the smaller number of sales of the 403 since it came out than of the 401, particularly in view of the fact that it sells for $60 less?

A. Well, as I think I testified this morning, sir, the 401 was introduced first. We have spent a great deal of money advertising and promoting the 401 Slant-O-Matic. Singer salesmen traditionally like to sell the highest price machine in the line because it means more commissions for them. Singer is known and has been for a hundred and ten years, as a maker of a quality product. There are buyers who like to buy the best. Some buyers who like to buy the best buy it on the basis of the highest price without regard to anything else. There are actually people who will do that. There are other buyers who truly want to buy the best and expect and accept that the highest priced product will be the best.

The Court: You mean they are sort of prestige buyers, people who, when they buy something, want to exhibit to their friends that they have the highest priced machine.

The Witness: That is right, your Honor. That is what—— [fol. 1587] The Court: Prestige buyers.

The Witness: That is the first class of the high priced buyer, the prestige buyer who wants to buy it for prestige because it is the highest price. Then you have the other kind of a best buyer who really wants to buy because it is best. You have two psychological elements there.

Q. Exhibit 153 shows that you spent in 1959 $544,000-odd in promoting the 403 or advertising the 403 and you spent $1,343,000 in advertising the 401, is that right?

A. That is right, sir.

Q. And in 1960 you spent $121,000 in advertising the 403 and $1,399,000 in advertising the 401, is that correct?

A. Yes, sir.

[fol. 1588] Q. These figures, by the way, I think you said you confirmed or checked them with your bookkeeping department. You mean by that that you got the figures from them?

A. The Controller's Office at my instruction, working with the tabulations kept by our Advertising Department, assembled these figures for me at my instruction.

Q. You did not mean to say that you actually looked at these books yourself?

A. No, sir, no. If there is any question about that, I did not examine the individual entries.

Q. As far as the sales of the 403 are concerned, have they been increasing since it came out, or decreasing?

A. The sales of the 403 have been increasing.

Q. I call your attention to Exhibit S-24, which is an exhibit attached to the stipulation of facts in this case.

Am I right in pointing out that the sales of the 403 in 1959—that was the year it came out, was it?

A. The 403 was introduced in April 1959.

Q. The sales that year were 50,269.

The sales in 1960 were 88,553.

A. From memory, that sounds right, if I may just verify [fols. 1589-1590] the figures.

(Document handed to the witness.)

A. Yes. Let me see. 1960 was the first full 12-months sales of the 403.

Q. Yes, I see. Now when was the 404 machine, which is the straight stitch machine that is sold regularly with a zigzag attachment—when did that come out?

A. That was placed on sale in January 1959.

Q. A little bit before the 403 was put on sale?

A. Four months ahead of the 403, but the 404 was not advertised until we had the 403 on sale also.

Q. So both of these machines were launched a year and a half to two years after the 401 was sold on the market?

A. Correct, sir.

Q. Now before the 404 was put on the market, I think the testimony already shows that the Singer 301 was the straight stitch machine that you were selling most of; is that right?

A. That's right, yes.

• • • • • • •

[fol. 1591] By Mr. Klots:

Q. Does this Exhibit 159 show not only the sales of the 301 but the 404 and other Singer machines as listed?

A. Yes, sir.

Q. Now, Mr. Bruder, what do you sell—what does Singer

sell the 404 for, together with the zigzag attachment and carrying case?

A. $189.50.

Q. Do you know any machines on the market in the United States with built-in cam devices for changing zigzag patterns that sell on the same price level or less?

A. Yes, sir. There are a number of machines, or several [fol. 1592] machines.

Q. Does your 404 machine compete with those machines?

A. Yes, sir, it does.

Mr. Klots: If your Honor please, I propose to offer in evidence now certain charts which are based on these figures that have just gone into evidence.

The government already has had copies for about two weeks.

Mr. Corcoran: Which charts?

Mr. Klots: These are the ones I am going to offer.

Mr. Corcoran: I do not have those.

Mr. Klots: Yes, you do—I am sorry, I thought you had copies of the charts.

You have had the figures on which they are based, have you not?

The Court: Are these graphic representations of what is already on this exhibit which has just been marked in evidence?

Mr. Klots: Yes.

The Court: This just graphically represents what is statistically recorded on the last exhibit?

Mr. Klots: Precisely.

[fol. 1593] The Court: And you offer that in evidence as being graphic representations, do you?

Mr. Klots: I do.

Mr. Elkins: No, your Honor, not as put in.

The Court: Any objection?

The Court: All right. Received in evidence. Mark it in evidence, Mr. Clerk.

(Received in evidence as Defendant's Exhibit 160.)

Mr. Klots: I might just point out, your Honor, this blue bar (Indicating)—that represents the sale of the 401 machine in 1958, plus the 319, which was also a built-in multicam machine.

This bar represents the sales of the built-in multi-cam machines in 1958 (indicating).

The Court: Indicating a blue bar to the extreme left of the exhibit as you look at it.

Mr. Klots: Now I will indicate next the gray bar, which is marked 301, 1958, which is the straight stitch machine sold by Singer with a zigzag attachment. That is this gray bar (indicating), immediately next to the blue.

Then I will indicate the next one is a little one, the 306. That was the Singer replaceable cam device machine that [fol. 1594] was being sold in 1958.

In 1959 you will see that the sales of the 401 were a little bit more, but not a great deal more.

You will see that the 404 came in, and together with the 301, which was still being sold in a considerable amount, the amount of the straight stitch and zigzag attachment sold. Then the 403 came in, which is that green bar (indicating)—the green section of the third bar, which added to the 306 machine, which was a replaceable cam machine, also shows how many were sold in 1959.

Then the interesting thing is in 1960, when the 404 and 403 had been out for a year or a little more than a year, you will see how the sales of the 404 and the 403 are catching up with the 401—the 401 remaining reasonably static, whereas these are catching up.

That is the purpose of the chart.

[fol. 1595] The Court: Do you attribute this increase in sales of the 404 partly to the economic conditions, people looking for a replaceable item or replacing an item at a lower cost, if available?

* * * * * * *

The Witness: Yes, in part I would say that that was true, but there are also many other factors that entered in, your Honor. The machines had been on the market longer, we had done advertising on them, we have emphasized in some of our advertising that we have a line of machines, a machine for every purse, the broad appeal. A broad line helps, of course. But, to specifically say that recession influenced it and to what extent, I don't know. I agree that I think it did have some bearing on it.

The Court: But in your advertising did you present the

401, the 403 and the 404 as being a group of three sister machines, all of which would perform substantially the same [fol. 1596] function?

The Witness: Yes, that is true. Companion machines, I think we called them.

The Court: You called them sister machines.

The Witness: And sister machines.

The Court: In your advertisement that I have before me, Exhibit 200, you said "The great Slant-O-Matic has two talented new sisters."

The Witness: Right.

Mr. Klots: I would like to present another chart here which is also based on the figures that have recently been received in evidence. The purpose of this chart is to show the relation of these number of sales to the amount spent in advertising.

. . . . . .

[fol. 1597] (Received in evidence as Defendant's Exhibit 161.)

The Court: What inference would you have the Court draw from this exhibit?

Mr. Klots: I would have the Court draw an inference from the fact that, even though these great amounts were spent consistently for advertising the 401, the replaceable cam [fol. 1598] machine and this straight stitch with the zigzag attachment with the small amount of advertising were nevertheless catching up and increasing in number and popularity.

The Court: Even though you tried to marry off the oldest sister, the other two were making better progress even though you didn't spend as much money on them.

Mr. Klots: That's right.

The Court: All right, I understand.

Mr. Klots: We have one more chart here which is based on this last exhibit that went in, and, just to make the record complete, this is the chart showing the sales of all Singer household sewing machines for the years 1958 to 1960, to make this record complete, to show what the market was so far as Singer was concerned, and I offer it in evidence. I don't want to make a particular argument about it at the

moment, except that there again it shows the 401 with about the same number and the 404 and the 403 catching up.

* * * * * * *

[fol. 1599] Mr. Elkins: We have no objection, your Honor, with the understanding, of course, that it merely attempts to picture what is set forth in Defendant's Exhibit 159, and in relation to Defendant's Exhibit 159 I take it that the figures there relate to sales of these Singer sewing machines in the United States, is that so?

Mr. Klots: That is correct.

[fol. 1600] (Received in evidence as Defendant's Exhibit 162.)

Mr. Elkins: So that there will be no mistake as to this being merely a graphical representation of the figures reflected in Defendant's Exhibit 159, we notice how, for example—excuse me, Mr. Klots, is there something down at the bottom of the 401 machine for 1959, down here, down at the base of the column?

Mr. Klots: I think there is a little hangover of the 319.

Mr. Elkins: I see. Go ahead.

Mr. Klots: I find that in order to complete the advertising figures I should offer this exhibit which has the advertising figures on the 301 and the 306 as well as the other machines.

By Mr. Klots:

Q. I ask you if that information was procured by you in the same manner as you procured it on the other machines.

A. Yes, sir.

Mr. Elkins: In relation to this exhibit, your Honor, as I understand it from later testimony of this witness, he has nothing to do with the advertising department, doesn't know how the advertising department allocates the cost of the various advertising expenditures to the 301, the 404 and the [fol. 1601] 403, and consequently he is not qualified to say or to testify as to what amount of money was spent in advertising any one of these machines.

The Court: He has testified that he personally has nothing to do with that feature or department of the business. However, he has testified that he had the accounting department

or the comptroller's office examine their books and records, regularly maintained in the conduct of their business, and prepared a schedule setting forth the information it recites. He says that has been done and he has been assured that it was done accurately, truthfully and completely.

Now, technically speaking, if you want somebody brought here from the comptroller's office to testify that they did it, we will have another witness.

. . . . . .

[fol. 1602] The Court: Do you want to put the Court to the burden of hearing all that proof? Do you feel that that is necessary?

Mr. Elkins: Well, may we reserve an answer to that, your Honor?

The Court: I will give you my answer now. It is received subject to connection.

[fol. 1603] Mr. Klots, if you don't get the concession, you will have to bring somebody in here from the comptroller's office who either made it or supervised it. I am sorry, but I believe in disposing of these things without deferring decision. Received in evidence subject to further proof.

(Received in evidence as Defendant's Exhibit 163.)

The Court: You will have to bring in somebody from the comptroller's office, if necessary.

Mr. Elkins: That is, if we make a motion to strike, your Honor.

The Court: No. Either you tell me you don't want that proof tomorrow or the next day we sit, or Mr. Klots will bring him in. On this I am not going to leave a motion to strike hanging in the air.

All right, received now in evidence subject to further proof to come later.

By Mr. Klots:

Q. Mr. Bruder, does Singer advertise all three of the machines, the 401 machine, the 403 and the 404, as being capable of doing zigzag stitching?

A. Yes, sir.

[fol. 1604] Q. I show you this and ask you if this is a typical ad that does that (handling).

A. Yes, that is a mat for a newspaper ad—or the proof of a mat for a newspaper ad, advertising all three machines.

(Mr. Klots hands document to Mr. Elkins.)

Mr. Elkins: We object to this. It seems to have been described by the witness as an advertisement which tells the reader that each of the three machines do exactly the same thing, and on its face it just isn't so.

The Court: That is a question for the Court to decide.

Mr. Klotz: That is not the question.

Mr. Elkins: I mean——

The Court: This paper which has been offered in evidence, is there a time indicated—6/60—that is June 1960?

The Witness: Correct.

The Court: And what is this notation on the bottom—what does that mean?

The Witness: That is the mat number.

The Court: Newspaper mat?

The Witness: Newspaper mat number, and this describes [fol. 1605] 300 lines for three columns, 900 lines, et cetera.

The Court: And was this advertisement used by Singer in June 1960?

The Witness: This is a mat which was prepared by our Advertising Department and distributed to our central agencies who have their own advertising budget for local newspaper advertising.

The Court: Do you know whether any advertisements were published from these mats that you circulated?

The Witness: I cannot testify specifically when and where the local agencies used these mats.

The Court: Did your local agencies put these mats to actual use? Do you have any newspaper reproduction of this?

The Witness: I have not seen the tearsheets on this, your Honor.

Let me explain, if I may, that our agencies have authority within their budget to place local newspaper advertising. They do not have authority to compose their own advertising copy. They must use company-approved mats

which are originated by our Advertising Department and distributed for them to place locally within their budget. [fol. 1606] I frankly would have to assume that this mat was used by some of our agencies in some newspaper, as all of them are, to my best belief.

The Court: But you do not know whether this was actually used?

The Witness: I couldn't say.

The Court: Mark it for identification.

In light of the objection, you will have to bring in some testimony, if you feel it is important, to show that the mat was in fact used.

(Marked Defendant's *Exhibit 164 for identification.*)

Mr. Klots: I call your attention, your Honor, to the fact that in Plaintiff's Exhibit 200, all three of these machines are advertised as being zigzag machines.

The Court: I have observed that but Exhibit 200 was received in evidence by consent, as I recall it.

Mr. Klots: Yes. I am not suggesting that that is the reason for letting this in.

Mr. Elkins: If your Honor please, the witness, in referring to the advertisement and the mat just marked for identification, as I recall his testimony, he testified that this was an exhibit which demonstrated that Singer advertised the three machines in question as doing exactly the [fol. 1607] same thing.

Mr. Klots: I do not think that is.

Mr. Elkins: As such, we object.

The Court: No. The witness testified that this was a newspaper mat sent out by Singer as one which was authorized by Singer to be used by its agencies for newspaper advertising.

Mr. Klots' purposes, as an attorney here, he wants the Court to note that Singer represented these three machines as serving the same relevant market and as being a fulfillment of an identical purchaser purpose.

Mr. Klots: The question I asked was whether they were all advertised as doing a zigzag stitch.

The Court: Well, the advertisement is the best proof of what it contains.

You will have to show, Mr. Klots, that this mat was put to actual use.

Mr. Klots: All right, sir.

The Court: If you can do it, I will take it in evidence.

Mr. Klots: Thank you.

Q. Can you tell us, Mr. Bruder, whether the combined sales of the 404 and 403—how do they compare with the [fol. 1608] sales of the 401?

A. The combined sales of the 403 and the 404 substantially exceed the sales of the 401.

Q. Now you say that the 403—there has been a good deal of testimony attempted to be brought out that the 403 and 404 have many of the same features of the 401, except for this method of pattern selection.

I want to ask you this. How did this happen, Mr. Bruder, that in designing these cheaper machines, the 403 and the 404, Singer left out that particular feature from both these machines?

A. In making our sales plans for the 401 and in consideration of the price point which we established at which we wanted to sell the 401, we realized that we could not sell a sufficiently large quantity of machines at that price point to get us the volume which we wanted to obtain, both from the point of view of sales and the manufacturing problem.

Therefore, the decision was made to produce two companion or sister machines based on the Johnson design. The problem was, having established different price points for those two other machines, to have sufficient differences in them so that the salesman could differentiate and justify a price difference if he were compelled to do so.

[fol. 1609] At the same time we had to bear in mind the manufacturing problem, which was to produce this line of machines with the greatest possible number of common parts in order to achieve optimum manufacturing efficiency.

Therefore, the 401 incorporated the built-in multi-cam feature and its means of swinging the needle.

The 403 is the replaceable cam method or device for actuating the work bar, and in the 404 the zigzag attachment which actuates the needle is the means of producing the zigzag stitch.

Q. Go ahead, complete your answer.

The question was, how did you come to leave off the particular feature that you did leave off?

A. Because—I tried to answer that—because we had to keep the fundamental root in this line of machines, both because of the manufacturing problem and the fact that at the prices we selected for the companion machines we could not make any changes which would inherently affect the characteristics and the fine quality of this fine line of machines.

Q. What do you mean by the fundamental root that you wanted to preserve?

A. The fundamental root was a die cast machine with [fol. 1610] a slanted needle bar construction, and with a common loop-taking mechanism, fixed bobbin case, drop-in bobbin, gear motor drive, die cast.

These were the fundamentals of the machine which gave this line its fine quality and performance.

Q. Why didn't you eliminate the slant needle feature in the cheaper machine, for instance, if you wanted to eliminate one feature but sell it cheaper? Why didn't you eliminate the slant needle?

A. In the first place, if we had eliminated the slant needle we would have eliminated a prime selling point for this line of machines.

In the second place, we would have destroyed the common part concept. If we had gone, for example, on one of these machines to the straight needle construction, it would change practically all of the parts. We would have lost that common part advantage.

Q. Are you saying that by leaving off the built-in cams and the dial to change the patterns—you are saying that that did not involve any fundamental change in the construction?

A. That's correct.

Q. Now, Mr. Bruder, what have you to say as to the bearing of this knob or dial method of changing patterns [fol. 1611] with respect to the ease of operation of this machine?

A. The tuning knob or dial is a feature which we have advertised and promoted, trained our sales organization to use as one of the selling points of this sewing machine.

Naturally we present it in as glamorous and dramatic a fashion as we can.

At the same time, as I think Miss Hutton has also testified, there are people who believe that a replaceable cam machine is easier to use than the so-called tuning dial which actually consists, as you know, of two dials in one—there are two settings to make with that dial.

Q. Is it your opinion, Mr. Bruder, that any machine which does not have a dial or knob for choosing patterns is able to compete with machines which do have that feature?

A. Why, of course.

Mr. Elkins: I object, your Honor.

The Court: He is just expressing his opinion as an expert. I will take it as an expert.

Objection overruled.

Mr. Klots: Your Honor, I would like to offer in evidence here—this was originally got up as a stipulation, but I now [fol. 1612] offer it as an exhibit—sheets torn from genuine original advertisements, catalogs of some of the biggest sellers of sewing machines in the country.

The government has had these copies for some time. We have actually in court here many of the catalogs that have already been sent on, from which these sheets were torn—I am talking about Montgomery Ward, Sears, Spiegel, Alden's—which show the types of machines they sell.

The purpose is to show that all these machines are being sold competitively. The purpose is to show, among other things, that the Sears people, for instance, although they used to sell the multi-cam machine, they dropped the multi-cam machine and now sell the replaceable type.

I realize that we ought to have somebody from Sears or Montgomery Ward, if the government insists, but otherwise they certainly look like genuine sheets from these catalogs.

The Court: You offer them in evidence as being copies of advertisements published at the dates given by the sewing machine retailers?

Mr. Klots: That's right.

[fol. 1613] The Court: Do you have any objection to these being received in evidence, Mr. Elkins?

Mr. Elkins: Yes, we do, your Honor.

The Court: So far as authenticity is concerned?

You do not dispute that these are actual copies of advertisements, actually published by reputable and known retailers, do you?

I understand, Mr. Klots, that you do not offer these advertisements in evidence as being proof of the truth of the contents contained in these advertisements.

Mr. Klots: No, sir.

The Court: You offer them simply in evidence as advertisements of sewing machine retailers?

Mr. Klots: Exactly, showing the variety of machines that are being advertised.

Mr. Elkins: I do not know if opposing counsel said anything about the method of selecting those advertisements that would appear in this heap of material or not.

The Court: He did not say a word about it; he says, "Here is a batch of advertisements that we gathered together from copies of actual advertisements that we have gathered together. We would like to offer them in evidence."

[fol. 1614] Mr. Klots: And there is a list which goes with them, which shows when the particular catalog from which the sheet was torn was distributed in the United States.

Mr. Elkins: Well, I suggest they have not been fully described. I do not see how they could possibly go in, your Honor, without some testimony from the person responsible for their selection.

The Court: The only way they could come into evidence would be a concession by the government, that if a witness were called by Singer, that witness would testify that he examined various catalogs, various advertisements and files and other sources of information, and that these are tearsheets of actual advertisements of these companies.

Mr. Klots: These are the pages which advertised sewing machines in those particular catalogs.

Mr. Elkins: We object to them, sir.

The Court: You won't concede it.

You will have to get somebody in to testify—the man who gathered these together.

Mr. Klots: May I have these marked for identification?
The Court: Yes.

[fol. 1615] (Marked Defendant's Exhibit 165 for identification.)

The Court: Unless this witness himself has knowledge of each one of these advertisements and will tell me or will testify that he knows of his own knowledge that these are the advertisements that he saw published by various manufacturers—if he will do that, I will take it into evidence on his testimony.

Mr. Klots: I will ask him if he did, but I do not know that he can say that he saw every one.

Q. Did you see these particular advertisements? I will show them to you.

The Court: As the man in charge of sales, probably he did.

(Documents handed to the witness.)

Mr. Klots: This is the type of catalog, sir (indicating).
The Court: I am familiar with them.

A. Every year I receive in my office copies of the Montgomery Ward and Sears Roebuck catalogs. I examine those pages with reference to their sewing machines-vacuum cleaner advertising particularly.

Some of the pages which are here I believe have been removed from catalogs which were in my office. Some were [fol. 1616] obtained in Chicago. This is like old telephone books. I do not keep them around year after year. I frequently just tear the pages that are applicable out and discard the catalog. But quite naturally we keep aware of what these two big retailers, Montgomery Ward and Sears Roebuck, are advertising in their catalogs.

The Court: Are these only Montgomery Ward and Sears?

Mr. Klots: No, there are two others. They have Alden's and Spiegel.

The Court: Alden's and ——

Mr. Klots: Spiegel.
The Court: Spiegel.

The Witness: Formerly Spiegel-May-Stern, and it is now called Spiegel's.

The Court: That is a mail order house?

The Witness: That is a mail order house.

The Court: And Alden's is a mail order house?

The Witness: Alden's is a mail order house.

The Court: Sears Roebuck is a mail order house?

The Witness: Mail order and retailers.

The Court: And Montgomery Ward the same?

The Witness: Mail order and retail.

The Court: We will have it marked for identification.

[fol. 1617] Bring somebody in from the Advertising Department who will testify that they have checked this against it, since you cannot get the concession—that will be another witness that we will have to listen to unnecessarily, but I suppose we will have to do it.

Mr. Klots: I have one other exhibit, sir, which your Honor will recall, there was annexed to the stipulation of facts lists which show the prices at which various sewing machines in this country are sold—straight stitch, replaceable cam, et cetera.

We have in those charts, which the government kindly consented to—here is a chart, straight stitch——

The Court: Have these charts been marked in evidence?

Mr. Klots: No, they have not. That is the point. This is a chart which we neglected to ask them to stipulate at the time they were making the statement of facts, and this chart has been prepared since then, and it shows the various types of straight stitch machines, the prices at which they are sold, and also whether a zigzag attachment is available.

The Court: I suggest that you give that to the government and let them look at it overnight.

[fol. 1618] Mr. Klots: They have had it, sir, for two weeks, and they have also had the shopper's reports which went with it and which could be checked, how we got this information.

I thought possibly they might be willing to let this go in on the same basis as the other charts that have already been marked in evidence.

That completes the file on all these types—these different types of machines.

Mr. Elkins: We object to them, your Honor.

The Court: If there is an objection, I will sustain the objection.

Mark it for identification.

Perhaps an evening of reflection might bring about a change of heart on the part of the government with respect to the various exhibits, which might simplify the proof further.

Mr. Elkins: This is unlike the previous chart, your Honor, in that it is not predicated on any facts on which there has been agreement. It is all new material.

The Court: It was not presented at the pretrial hearings, as I recall.

Mr. Elkins: No.

[fol. 1619] The Court: I am not finding fault with you but perhaps overnight you might look it over, and you might feel that it is accurate, and you might be disposed to save the court some time by consenting to its admission in evidence without conceding its accuracy.

Mr. Elkins: I wonder if opposing counsel might not also give thought to saving time of the court in relation to a witness who would testify as to some—how many—100 machines—whether they have attachments, what they sell for to the penny throughout the United States.

The Court: If you addressed that to him in private colloquy and conversation, I think you will find him most cooperative.

(Marked Defendant's Exhibit 166 for identification.)

* * * * * * *

[fol. 1620] By Mr. Klots:

Q. Mr. Bruder, there has already been testimony about the replaceable cams that are sold with the 401, the 404 and the 403, and I think the number that go as standard equipment with each machine has also been testified to. Can you tell us whether or not there have been many sales of the additional cams, the ones that don't come as standard equipment?

A. As has been previously testified, we make extra cams available for both the 401 and the 403. The sales of those extra cams have been very desultory, indeed.

Q. Do you know of any limit as to the number of cams that can be made for those machines?

A. No, sir. Our engineers assure us that they can make up cams to create any pattern anyone might want.

Q. Are there any machines that you know of, competitive machines, that sell less cams than Singer sells with their replaceable cam type machines?

A. Yes, there are a number of them. Two of the prominent retailers who were just mentioned, both Montgomery Ward and Sears Roebuck, sell replaceable cam machines, so-called, that have fewer cams with them than the 401 or the 403.

[fol. 1621] Q. So Montgomery Ward and Sears Roebuck sell less cams with their machines than you do, is that right?

A. On some models.

Q. On some models, yes. Did you ever know or hear of a customer coming into a Singer store, in your experience in the sales department, and asking specifically for a machine with the dial or tune-in knob to change patterns?

A. I never heard of any such inquiry ever having been made.

Q. As a matter of fact, what do customers usually ask for when they come in to a shop to buy a machine?

Mr. Elkins: I object, your Honor.

The Court: Do you object because you feel that he does not have the basic knowledge to permit him to answer?

Mr. Elkins: That's right. As I recall his qualifying testimony——

The Court: Yes, you had better qualify him as to his knowledge of it.

Mr. Klots: Well, I will, but I thought he was pretty well qualified.

The Court: I did, too, but Mr. Elkins wants to have some [fol. 1622] questions addressed to his experience in this particular field.

Q. Tell us again, or tell us, Mr. Bruder, whether part of your job in any way—and, if so, how you go about it—is finding out what the customers who come into a Singer retail store indicate they want.

A. In addition to the regular channels which I mentioned earlier, may I point out that I, in the course of a year's

time, visit a very substantial number of Singer shops. I talk with them——

The Court: Retail shops?

The Witness: Retail shops, sir.

The Court: And you visit them yourself?

The Witness: I visit them. I talk personally with sales women on the floor of these shops.

The Court: And are you present there when customers come in?

The Witness: I am present there when customers come in. Occasionally I assist, even now, in getting a sale started. If the girls on the floor are busy, I will wait on a customer myself.

One of the things, among the many things, that I ask our managers, our salesmen, our sales people is what are people [fol. 1623] asking for when they come in. I have two things in mind. I am constantly trying to measure the efficacy of our advertising. When you spend $3,000,000 a year on television, you want to know what response you are getting for $3,000,000 from the public. And one of the questions I frequently ask is, leaving out the notions buyers, "What do people ask for when they come in to inquire about sewing machines?"

Q. What did you find out as a result of that inquiry?

A. There are three general questions that are most frequently asked: No. 1, "I would like to look at a good used machine." No. 2, "I want to look at a sewing machine. Now, nothing fancy, just a plain sewing machine." No. 3, "I would like to look at that Slant-O-Matic that you have advertised so much." These are the three commonest inquiries that a potential customer will make when coming into our store.

Q. What would you say as to whether or not the sewing machines sold in the United States vary in the different features that they carry?

A. Of course they vary greatly in the different features they carry. One way of looking at a sewing machine is to regard it as a package or bundle of features, and they will [fol. 1624] vary. These bundles or packages will vary in their composition, with the result that you could say there are 50 or 60 or almost a limitless number of combinations of features that can be put together in a sewing machine.

Q. And do these machines, although they have different features, compete with each other in this market?

Mr. Elkins: I object, your Honor.

Mr. Klots: I don't see what the basis of the objection is. This man can certainly tell——

The Court: Don't argue. It may be unnecessary.

Objection overruled.

Mr. Elkins: The word "compete," your Honor, is something that has stumped the courts, the Supreme Court. It is not even allowed in an interrogatory.

The Court: "Compete" is found right in the dictionary, is it not?

Mr. Elkins: I am afraid the legal dictionary would have quite a far more extensive——

The Court: This man is not a lawyer.

Mr. Klots: Please read the question.

(Pending question read.)

[fol. 1625] A. The very reason in designing a machine or a line of machines——

Mr. Elkins: Object, your Honor. This does not seem to be a responsive answer.

The Court: He has not finished yet. You are anticipating. If it is not responsive, you may move to strike it out.

. . . . . .

A. Right. The very reason or reasons that a marketing man uses in putting together a machine with a package of features, trying to get a different feature, is so that his machine will compete.

Q. I take it your answer is yes.

A. Very definitely yes.

Q. I think it has already been shown, Mr. Bruder, that there are sewing machines sold in the United States which have features that not even the Singer 401 machine has.

[fol. 1626] A. Yes, of course.

Q. We have had illustrations of the Necchi Supernova. Is that one?

A. The Necchi Supernova is one, the built-in needle threader, pattern elongation, cam control feed.

Q. Yes. By the way, speaking of the Necchi Supernova,

will you tell us whether or not Singer makes a practice of having its agents throughout the country send in examples of competing advertising?.

A. One of the regular, established procedures for gathering information about the competitive situation in the markets everywhere in the country is to have our general agents submit to us clippings of newspaper advertising and other advertising which inform us as to what our competitors are featuring, what they are doing. Some of that material comes in direct to my four assistant vice presidents. Some of that material under regular, established procedures goes to our trademark department when the general agent thinks that any particular advertisement, sign on a building or anything else might infringe a Singer trademark or Singer patent.

Q. That is the duty of those people to do that?

[fol. 1627] A. That is the regular, established procedure.

Q. I show you this photograph to which is attached a smaller photograph and ask you if this was sent in by one of your agents.

A. Yes, sir, it was.

Q. Who sent that in?

A. That was sent in by our Milwaukee central agency.

Mr. Klots: I offer it in evidence.

The Court: Isn't that the same exhibit we have now?

Mr. Klots: It is the photograph of——

The Court: 146-B?

Mr. Klots: The exact duplicate of it pasted in a window in, I guess it is, a Wisconsin shop.

The Witness: Actually, as I recall——

Mr. Klots: If I may be permitted to state, the particular one in evidence came from New Orleans. This is a photograph of the same thing you will find in a Necchi shop.

The Court: You recall, Mr. Elkins?

Mr. Elkins: I do now.

The Court: This is the sales propaganda, so-called, which the defendant has offered in evidence as being circulated [fol. 1628] by Necchi (indicating), and I received it subject to proof. Apparently this exhibit, this paper now offered in evidence, is some evidence to show that this was actually in a window out in Wisconsin.

Mr. Klots: A copy of the same thing was actually in a

window. I am perfectly willing to substitute that for the other exhibit.

The Court: No. Any objection?

Mr. Elkins: It is hearsay and accordingly we object to it, your Honor. As I recall, the first witness that put this in said that it was not intended for the consumer but was intended solely for the training, the trainees of Necchi.

The Court: That's right. Now he has discovered on research, not in time to take a deposition, that it was put in a window of a retailer out in Wisconsin.

Mr. Klots: And attached is a photograph of the thing in the window, a little white patch.

The Court: We will mark it for identification. I cannot take it in evidence. Legally the objection is well taken. We will mark it as Defendant's Exhibit 146-C for identification.

[fol. 1629] Mr. Klots: If necessary, I will get the man who took the photo.

The Court: Well, you might be able, with a little conversation, to persuade Mr. Elkins to concede that, if the witness were called, he would testify to certain facts which might make it admissible.

Mr. Klots: I will be as mellifluous as possible in my conversation with him.

(Marked for identification as Defendant's Exhibit 146-C.)

By Mr. Klots:

Q. Now I ask you, Mr. Bruder, if this one came in from another part of the country, this paper that I now show you?

A. Yes, this is one of a number of these which were submitted in the usual course of business from various agencies.

The Court: Do you offer it in evidence?

Mr. Klots: I offer it in evidence.

Q. This came from where? Can you tell (handing paper)?

A. Yes, this particular one came in from our San Francisco agency.

Q. Is that a memorandum that came with it?

[fol. 1630] A. This is the memorandum that came with it. The memorandum is by one of our district managers, a man by the name of Sewell. It is addressed to the central

agent, general agent in San Francisco, Mr. Howard Doerr. Mr. Howard Doerr in turn sent it in to Mr. Tinkle who is one of my assistant vice presidents in charge of the Far West, and he turned it over to me.

Mr. Klots: I offer it in evidence together with the memorandum that came with it.

The Court: This is a different circular?

Mr. Klots: It is pretty near the same. It is a little different.

The Court: It is different in layout, I have observed.

Mr. Klots: Yes, a little different layout.

The Court: Any objection?

Mr. Elkins: We object, your Honor.

The Court: The objection will have to be sustained. Mark it for identification as a new number.

(Marked for identification as Defendant's Exhibit 167.)

* * * * * * *

[fol. 1631] Q. Mr. Bruder, I think previous testimony has indicated that a couple of the features that some of the Singer competitors have on their machines, such as the Necchi Supernova, are cam controlled feed, elongated stitch control—are you familiar with those two?

A. Yes.

Q. What I want to ask you is: did you ever hear of a pattern elongation market for sewing machines?

A. No, sir.

Q. Did you ever hear of a cam controlled feed market for sewing machines?

A. No, sir.

Q. Does Singer finance its sales of household machines, I mean finance the customer in any way?

[fol. 1631a] A. Yes. We do not use the facilities of an outside finance company; we carry all of our instalment paper. We have our own acceptance, collection departments.

[fol. 1632] Q. What are your terms that you make with a customer buying your machines?

The Court: How is this material to this case? I don't see how it is material.

Mr. Klots: Well, I think it shows, your Honor, that these

machines, even the high-priced ones, are competitive with the lower-priced machines because you can buy them on so many dollars a week or so many dollars a month.

The Court: Singer carries their own finance on installment sales rather than send them to CIT or something?

Mr. Klots: I did not mean that. What I meant to ask was can a customer buy a Singer machine on the installment plan. That is all I meant to ask him.

The Court: If that's all you want, we will let him answer that.

Can you make a purchase of a Singer machine on the installment plan?

The Witness: You may take up to 30 months to buy a Singer sewing machine on the installment plan.

Q. What percentage of your sales would you say were financed under the installment procedure?

A. Between 70 and 75 per cent of our sales are in-
[fol. 1633] stallment sales.

Q. Do other retailers sell under the installment plan?

A. Yes, they do, sir.

Q. Do you know whether or not Singer's terms of payment are or are not as favorable as those of other retailers?

A. Our terms are as favorable as any that I know of and more favorable than many.

Q. Do retailers, in your experience that you are familiar with, not only Singer ones, who carry household sewing machines, limit their lines to one particular type?

A. No, sir.

Q. Do you know of any retailer who does not carry any built-in multiple-cam zigzag machine?

A. Yes, there are several very prominent ones.

Q. Will you mention some.

A. Montgomery Ward, for one, does not sell a so-called built-in cam machine.

Q. Any other mail order house?

A. Sears Roebuck no longer sells one. They did but the model 90 has replaced it.

Q. Do most manufacturers of sewing machines that you
[fol. 1634] are familiar with make straight stitch as well as multiple-cam, replaceable cam and manual sewing machines?

A. I am sorry. Would you mind repeating the question.

Q. Certainly. Do most manufacturers of sewing machines make straight stitch as well as machines that have multiple-cam devices, replaceable cam devices and manual devices for making the zigzag stitches?

A. Most manufacturers do not restrict their manufacture, if I understand your question, to just one type of machine.

Q. That is my question.

A. They will make a straight stitch machine and they will make machines with a swinging or vibrating needle bar actuated by various devices or means.

Q. Now take wholesale distributors. Do they distribute straight stitch machines with zigzag attachments and machines with built-in multi-cam devices, machines with replaceable cam devices, machines with manual devices? Would they carry all those types?

Mr. Elkins: Objection.

The Court: What is the ground of your objection?

Mr. Elkins: I don't know if he has been qualified as to wholesalers, who the wholesalers are and how they conduct [fol. 1635] their business.

The Court: If he doesn't know, he will tell us.

Do you know? Are you able to answer this?

The Witness: I am familiar with the means and methods of distribution of sewing machines in the United States, your Honor. It is part of my job to be aware of that.

The Court: Objection overruled.

A. Wholesalers do distribute a variety of machines. A wholesaler does not restrict himself to just one particular kind or model of machine.

Q. What about retailers? Do most retailers carry straight stitch sewing machines as well as sewing machines with built-in zigzag devices?

A. Yes, sir, they do.

Q. And do retailers carry straight stitch sewing machines in different departments or in different places in the store from where they carry machines capable of producing zig-zag patterns?

A. No, sir.

Q. Do retailers physically segregate, for purposes of sale, machines with manual devices, replaceable cam devices, multiple-cam devices and straight stitch sewing machines

[fol. 1636] with zigzag attachments? Do they segregate them in the store in different places?

A. No, they are all displayed in the same retail area.

Q. Now tell us this. Tell us whether or not straight stitch sewing machines with zigzag attachments, machines with manual devices for making zigzag stitches, machines with replaceable cam devices, and machines with multiple-cam devices are advertised in the same media, such as newspapers, women's magazines, consumer periodicals, trade journals, radio and television, or are the different models advertised in different types of advertising media.

A. No, they are all advertised in the same advertising media and frequently in the same ad.

Q. Do customer's who come in to Singer shops—and I think you have already testified as to what you know about customers coming in to Singer shops—indicate, prior to the salesman's demonstration, that they know the difference between a straight stitch sewing machine with a zigzag attachment and these other devices for making zigzag stitches?

A. The customer doesn't have a clear-cut knowledge of how zigzag stitching is accomplished in one machine versus another. There is a consumer awareness of a straight [fol. 1637] stitch machine and a consumer awareness of zigzag stitching of various kinds, but the means by which it is accomplished the average customer doesn't know anything about.

Q. Do the customers who express an interest in zigzag stitching patterns ask for the machine which can produce a great number of stitch patterns?

A. No, sir.

Q. Mr. Bruder, what features are Singer's salesmen instructed to emphasize in attempting to interest a customer in a specific sewing machine?

A. We put out a great deal of training material to guide our sales people in the sale of sewing machines. Some of this material has to do with the selling of sewing, the advantages of sewing, to any customer, what we call creative selling material, trying to create interest in a machine and the sale of the machine where possibly the woman has expressed no specific interest in buying one.

In addition to that, we put out a great deal of product

training material which is designed to familiarize the sales people with the most important features and qualities of our machines so that they may be best presented to the public.

[fol. 1638] Q. Now I show you this document here. What is this?

A. This is a chart which we put out to our selling organization for the purpose of calling to their attention the desirable features in our Slant-O-Matic machine and pointing out, as is frequently done in such comparative charts, the fact that none of our competitors have all of the features which we find in the Slant-O-Matic and that, in fact, most of them only have a few of the features which we have in the Slant-O-Matic.

The Court: Do you want to offer this in evidence?

Mr. Klots: Yes, I do. I offer it in evidence.

The Court: Any objection?

Mr. Elkins: No, your Honor.

(Received in evidence as Defendant's Exhibit 168.)

Q. I ask you what this is (handing).

A. Well, this is, first of all, a meeting guide to assist the manager in holding his weekly sales training meeting with his organization, and included in that is a Singer superiority checklist where we outline the various features that make our Singer slant needle series superior. You want me to read any of these features?

[fol. 1639] Mr. Klots: No. I offer it in evidence.

Mr. Elkins: As to the last exhibit, your Honor, Defendant's Exhibit 168, there are no dates available as to when they were distributed, and I don't recall any testimony of the witness on that.

The Court: Defendant's Exhibit 168 is in evidence. My recollection is that it was received in evidence by consent.

Mr. Elkins: That's right, your Honor.

The Court: This paper that is now offered in evidence, have you any objection to it being received, these booklets?

Mr. Elkins: I don't recall any testimony from the witness as to when they were printed, as to when they were circulated.

The Court: Is that the basis of your objection?

Mr. Elkins: That's all, your Honor.

The Court: When was this booklet prepared or circulated amongst your selling organization, approximately?

The Witness: Well, this is a comparatively recent shop meeting guide. I would say this was put out within the [fol. 1640] last few months. I don't have the date on it. I can obtain the date. The feature comparison list, again from memory, was put out, I think, in 1957 or early 1958. I can, again, go back and get the exact date.

The Court: Defendant's Exhibit 168 was put out in 1957 or 1958.

The Witness: That is just from memory.

The Court: The paper now offered in evidence, which is Defendant's Exhibit 169 for identification at the present time, you say is of recent origin, according to the best of your recollection?

The Witness: Yes, that is as I recall it.

The Court: Do you now, in light of this testimony, press the objection?

Mr. Elkins: No, your Honor.

The Court: Received in evidence, then.

(Received in evidence as Defendant's Exhibit 169.)

By Mr. Klots:

Q. Mr. Bruder, what are some of the factors which weigh with the Singer Company in pricing a sewing machine?

A. There are a number of important factors which we [fol. 1641] take into consideration in establishing the price on a sewing machine, some of which I think are common to all companies or all marketing people.

First and foremost, in establishing your price, you consider the name that your product is going to bear, and, of course, in our case, with the name Singer, I think we are aware of, proud of, the name and believe that because of the prestige that the name carries, this is a factor that should be considered in establishing the price level.

Secondly, you must, of course, consider the quality and the features that deal specifically with general quality of performance as distinguished from features which perhaps have a colorful appeal, and certainly in the latter category the features which are going to be included in a

machine must be considered. The cost, of course, of the machine is always considered in pricing your product. The competitive market situation in general is always considered in pricing your product. The extra service that you are going to give, guarantees, service of the machine, instruction, these factors are also all considered in the pricing of your product.

Q. Yes. What about sewing courses?

[fol. 1642] A. That would be one of the services, the instruction that we give with a machine. Naturally, that would be considered in the pricing.

Q. Do you offer any guarantees with the machines?

A. I think that we offer the most liberal guarantee of any company in the business.

Q. The stipulation of facts in this case shows that many American manufacturing companies of sewing machines ceased to do business within the last few years. Singer is practically the only one that survived. How do you account for the fact that Singer has been able to survive and maintain a substantial share of the market?

A. We have been in business for 110 years, Mr. Klots. I think that we have earned a justified reputation for making a quality product that will last, a product on which the customer is always assured of being able to get parts and service. We have given sewing instruction to the purchasers of our sewing machines. We have worked with the public schools, we have worked with the 4-H Clubs, we have worked with the Girl Scouts, constantly building an awareness of Singer and an acceptance for Singer, and we, of course, try to keep our product line up to date and always offering to the public the kind of merchandise which we [fol. 1643] believe the public wants.

Q. What about the location of your stores?

A. Of course we had a tremendous built-in advantage in that we do handle our product from the time that—well, we actually cut our own logs to make our cabinets. We make our product; we distribute our product; we finance our product through our own organization.

Q. And your services, I think you have already mentioned, have you not?

A. The same thing is true on services, whether you are talking about service on the product from a mechanical

point of view or service and assistance in getting the best use from the product.

Q. Does Singer advertise widely?

A. We are by far the largest advertiser in the sewing machine field.

Q. Are the services which Singer can perform through its wholly-owned outlets throughout the country duplicated by any retailer of Japanese sewing machines?

A. Not that I know of, Mr. Klots.

Q. What about guarantees, sewing courses, general quality of Singer products? Are they duplicated by any Japa-
[fols. 1644-1644a] nese retailers?

A. Not in my opinion.

Q. Have you had occasion to observe, in the course of your experience in the sewing machine market, whether or not foreign-built sewing machines have been able to compete with American-made sewing machines in all types and prices?

A. I most certainly have been able to observe it, Mr. Klots.

Q. What have you been able to observe?

A. The foreign-built machines have been able to compete very successfully in the American market, and, as a matter of fact, with the exception——

Mr. Elkins: I object, your Honor. He seems to have answered the question fully and completely.

The Court: Yes, he has.

* * * * * * *

[fol. 1645] New York, June 6, 1961, 11 A.M.

CHARLES F. BRUDER resumed.

Direct examination continued.

By Mr. Klots:

Q. Mr. Bruder, I recall that at the last question and answer before we ceased yesterday we were talking about whether or not foreign built machines had been able to

compete in the American market, and your answer was yes, to that effect. Now, the stipulation of facts in this case stipulates that among the companies which have gone out of business——

The Court: You had better refer to the number. What paragraph number?

Mr. Klots: I am referring to paragraphs 10 and 11 of the stipulation of facts, page 5 and 6.

Q. Among the companies which have gone out of busi-
[fol. 1646] ness in the United States was the White Sewing Machine Corporation. What information do you have as to the reasons why the White Sewing Machine Company ceased to manufacture in the United States?

Mr. Elkins: I object, your Honor.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: I think we are getting a little far afield from the issues in this case.

I take it that you object to this, Mr. Elkins, as being immaterial?

Mr. Elkins: Yes, your Honor.

Mr. Klots: May I make this statement about it, your Honor?

The Court: Yes.

Mr. Klots: It does seem to me, sir, that on the question of the attempt to monopolize, the fact that the foreign competition, not only the Japanese but European, have been so successful is highly relevant. I think, with the picture of such successful competition that has gone on, that has driven these other companies out of business in this country, on the question of monopoly it has a great bearing, as to whether it is possible to monopolize this market.

The Court: Well, I don't think it is relevant here, particularly in my view of what I believe to be the govern-
[fol. 1647] ment's contention, and perhaps this would be an appropriate time to set that in its proper focus.

Mr. Elkins, one of the charges here or one of the counts here is that the defendant attempted to monopolize.

Mr. Elkins: That is right, your Honor.

The Court: Am I correct in my belief, in my understanding, that the government relies solely upon its contention

that the attempt to monopolize, which it charged against the defendant, arose from the acquisition of the Gegauf patent and that it had a purpose to so acquire that patent to exclude Japanese competition, and that by excluding Japanese competition through the assertion of the Gegauf patent that, in substance, is the attempt that the government charges was committed by the defendant to monopolize?

Mr. Elkins: That is substantially true, your Honor. I could make a couple of modifications, however.

The Court: Suppose you make such modifications as you think are necessary, because, as I have been listening to this case, I have come to the feeling that the government relies solely upon the acquisition of the Gegauf patent and the arrangements or agreements which were made with Vigorelli and with Gegauf as co-conspirators to put them [fol. 1648] in a position where they could assert restraints against importations only of the Japanese zigzag sewing machines, particularly the multi-cam machine carried zigzag sewing machines, and that you allege that the same acts which you say resulted in the imposition of unlawful restraints upon the Japanese importations of this type of machine are also the identical acts and the only acts that you charge as constituting the attempt to monopolize.

Mr. Elkins: If your Honor please, in substance what your Honor says is true. I would modify it only in the following particulars: that the acquisition by Singer was of two Gegauf patents, not one patent.

The Court: When I said "Gegauf" I meant what you call Gegauf 1 and Gegauf 2.

Mr. Elkins: Yes. Also, your Honor, the government contends that the attempt to monopolize is not confined to the exclusion solely of Japanese-made machines. The Japanese-made machines, as we tried to point out, was the subject of the alleged conspiracy as between Singer and Gegauf. However, in relation to the attempt to monopolize, it is the government's position that Singer, in acquiring these two patents, did so in order to exclude all imports from the United States of machines having the mechanism in- [fol. 1649] volved in the subject matter of those patents, and that it did so to prohibit anybody else from manufacturing such machines in the United States. So that the

attempt to monopolize goes out beyond the terms or the substance of the conspiracy.

Gegauf, for example, had no interest, apparently so far as the terms of the conspiracy are concerned, in whether or not Europeans came into the country.

Apparently he, as far as the substance of the conspiracy was concerned, had no interest in whether or not any other United States competitor or potential competitor might be able to manufacture those machines in the United States. However, in relation to the attempt, Singer did.

The Court: Do I understand by this statement of yours that the sole and only acts you charge were committed by Singer, which constituted the attempt on their part to monopolize, was the acquisition of the Gegauf 1 and Gegauf 2 patents?

Mr. Elkins: That is right, your Honor, with the addition of the acquisition of a Messerschmitt application which we state was acquired for the purpose of excluding or re-
[fol. 1650] stricting machines that would be imported into the United States, especially those from Japan.

The Court: Do I understand, then, that the sole and only acts that the government charges were committed by the defendant in the attempted consummation of monopoly were the acquisition of the Gegauf 1 and Gegauf 2 patents, and of the Messerschmitt application?

Mr. Elkins: That is true, your Honor. There might be another patent application——

The Court: I am not concerned with "might." I think we have reached the stage when "mights" should disappear from this case.

Mr. Elkins: Well, what your Honor says is true.

The Court: Then the government charges that the attempt to monopolize, which is charged against the defendant, the acts constituting that attempt were the acquisition of the Gegauf 1 and Gegauf 2 patents, and of the Messerschmitt application, and of nothing else.

Mr. Elkins: That is right, your Honor.

The Court: All right. Then in the light of this statement, Mr. Klots, I do not see how this evidence is material. We
[fol. 1651] are going to go in, then, to the question of the history of these 1, 2, 3, 4, 5, 6 sewing machine companies, and it does not appear to be necessary to do so, particularly

in view of the fact that the government does not charge here that Singer has a monopoly, does not charge that the acts of Singer ripened into a monopoly, and simply says that they attempted to secure a monopoly by the acquisition of Gegauf 1, Gegauf 2, and Messerschmitt application.

Mr. Elkins: Further, your Honor——

The Court: I take it in view of that, that this evidence is not material.

Mr. Elkins: We do not contend, your Honor, that the companies involved here in this discussion, the other United States companies—we do not contend here that they were excluded by Singer.

The Court: In other words, the government does not contend that Singer in any way contributed to the discontinuance of the business done by any other American sewing machine company.

Mr. Elkins: That is right, your Honor. It is no part of this case whatsoever.

The Court: And is no part of the charge made against [fol. 1652] the defendant.

Mr. Elkins: That is absolutely right, your Honor.

Mr. Klots: Your Honor, if I may just have a word. I think it is very important what your Honor——

The Court: This, I think, is very important.

Mr. Klots: It is very important what your Honor has brought out, but I do think this, that even in the idea of an attempt to monopolize, it must be an attempt to monopolize a relevant market, and what we have tried to show here that the relevant market was a much larger market than this particular type of built-in multi-cam device, and I think the fact that the great quantities of foreign machines have been coming in, of all types—built-in cam devices, replaceable cam devices, straight stitch kind of devices with zigzag attachments—I think the fact that they have been coming in to such an extent that other companies have had to go out of business has a great deal of bearing on the type of market, the relevancy of the market which we are accused of attempting to monopolize.

The Court: I will, in light of the statement you have just made, permit a limited examination into this field, [fol. 1653] which will concern when these companies ceased doing business, the type of machines that they did sell up

to the time that they went out of business—and not much more.

Mr. Klots: I am only going to ask about one company.

The Court: All right.

Mr. Klots: And I am only going to put in two exhibits about this one.

The Court: All right, we will permit this question. The government has an exception. We will determine what relevance it has later on.

By Mr. Klots:

Q. I call your attention to the fact, Mr. Bruder, that the stipulation of facts indicated that the White Sewing Machine Company had ceased to do business by 1959, and I ask you what information you have in your possession as to the reasons why the White Sewing Machine Company ceased to do business.

Mr. Elkins: I object, your Honor, on a different ground—that of hearsay. We are not directing ourselves now to——

The Court: Yes, objection sustained.

Were you familiar with the White Sewing Machine [fol. 1654] Corporation when it was in business?

The Witness: Yes, sir.

The Court: And where did it have its plant?

The Witness: In Cleveland, Ohio.

The Court: If you don't mind, Mr. Klots——

Mr. Klots: I would be delighted.

By the Court:

Q. When did it cease doing business?

A. It ceased manufacturing sewing machines in the United States in 1957.

It continues to do business by buying sewing machines from various manufacturers in Japan and having the White name placed on those machines.

Q. And what type of machine did they manufacture at the time they ceased doing business?

A. At the time they ceased doing business they were manufacturing a variety of so-called straight stitch sewing machines, a number of different models of straight stitch sewing machines.

Q. And do you say they still continue doing business but it is one of marketing Japanese-made machines under their trade name "White"?

A. Yes.

Q. And what type of machine have they marketed since [fol. 1655] they ceased their own manufacturing processes?

A. May I amend my previous statement by saying that in addition to the machines which they buy and put their label on in Japan, they have also brought some machines in from a German manufacturer.

Q. What type of machine did they bring in from Japan and Germany?

A. From Japan they have brought in several different models of so-called straight stitch machines and several different models of zigzag sewing machines.

Q. And from Germany?

A. From Germany a zigzag sewing machine.

The Court: Go ahead.

Mr. Klots: Thank you, sir.

By Mr. Klots:

Q. I should like to now show you this document and ask you if you recognize it (handing witness)?

A. Yes, sir, I do.

Q. What is it?

A. This a photostatic copy of the annual report of the White Sewing Machine Company, the original of which was sent to me by Mr. Volmer Fries, chairman of the White Sewing Machine Corporation.

Mr. Klots: I would like to offer it in evidence, purely [fol. 1656] for the purpose of showing the second paragraph on the first page (handing).

(Mr. Elkins examines)

Mr. Klots: I am perfectly willing to offer just that paragraph.

Mr. Elkins: We object to it, your Honor, as a matter of hearsay. This is a statement signed, I believe, by some Mr. Fries—F-r-i-e-s (handing to the Court).

Q. Who was Mr. Fries?

A. Mr. Fries is the chairman of the board of the White Sewing Machine Corporation.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Klots: I call your Honor's attention to the fact that this, I think, can be regarded as a business record of the company, and has been so held by the Supreme Court of New York State under the Civil Practice Act. These annual reports are required to be filed with the SEC.

[fol. 1657] The Court: You don't dispute, do you, Mr. Elkins, that this is a photostatic copy of the annual report of the White Sewing Machine Corporation?

Mr. Elkins: No, your Honor, we do not.

The Court: For the calendar year ending December 31, 1957.

Mr. Elkins: No, your Honor, we do not.

The Court: And that this White Sewing Machine Corporation is the same corporation which is referred to and named specifically in the agreed statement of facts?

Mr. Elkins: That is true.

The Court: I will receive it in evidence. You may have an exception.

You only offer the second paragraph of the first page, and we might as well read it right in the record.

Mr. Klots: Yes.

The Court: Do you desire to have any other portion of the record in evidence, Mr. Elkins?

Mr. Elkins: Your Honor, I believe the whole thing should come in.

The Court: All right. We will receive the whole report in evidence, but the defendant specifically calls the Court's attention to the second paragraph on the page numbered [fol. 1658] one of the report, which counsel has inclosed in a bracket.

Mr. Klots: And the record, I assume, shows it is the annual report for the year 1957?

The Court: Yes. Is that the way you drew that line around that paragraph? Is that the proper paragraph, where you have the line?

Mr. Klots: Yes, that's right. That is where I drew that line around that.

(Received in evidence as Defendant's Exhibit 170.)

Mr. Klots: I have one other document which also relates to the difficulties of the White Company, and that is a certified copy of a brief submitted to the Committee for Reciprocity of the United States Tariff Commission, and it was submitted, according to this certificate, on April 3, 1957 by White Sewing Machine Company, and I offer it for the same purpose.

The Court: Have you an objection?

Mr. Elkins: This, your Honor, is a set of documents of some ten pages, and we would like to ask of opposing counsel the purposes for which it is being offered.

Mr. Klots: For the same purposes as the previous ex-
[fol. 1659] hibit, and I call particular attention to the second paragraph on the first page, and the second paragraph on the second page which might be called the first full paragraph.

Mr. Elkins: We object, your Honor.

The Court: Objection sustained. Mark it for identification.

(Marked Defendant's Exhibit 171 for identification.)

Mr. Klots: I would like to know the basis of the objection, your Honor.

The Court: The basis is that it is not a record of the type of the annual report. It is simply a brief that apparently has been filed with some agency of the government.

Mr. Klots: Yes. It is taken from the files of that agency.

The Court: You have offered it as proof of what it contains, the contents. It is not proof of its contents. There might be an exception made with reference to an annual report of a corporation which is required by law to be filed, but not with reference to a brief filed with a regulatory agency.

Mr. Klots: I am offering it also to show the state of
[fol. 1660] mind of the White Company, your Honor, not necessarily for the truth of the statements but for the state of mind in their representations to the United States Government.

The Court: If you want to do that, you had better bring somebody here from the White Company.

Mr. Klots: Your Honor, I have no further questions of

Mr. Bruder. However, may I say this, we have a witness here from out-of-state, from out West, and he will only take five minutes. I don't like to interrupt the cross-examination but——

The Court: I don't think Mr. Elkins will have any objection.

Mr. Klots: If we can just put him on now for five minutes——

The Court: What is he going to testify to?

Mr. Klots: He is going to testify about that sheet showing the Necchi machines, to identify that.

The Court: All right.

* * * * * * *

[fol. 1661] William T. Fitzgerald, called as a witness by the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Klots:

Q. Mr. Fitzgerald, where do you live?

A. Janesville, Wisconsin.

Q. And what is your address in Janesville, Wisconsin?

A. My home address?

Q. Yes.

A. 1205 Elida Street.

Q. Are you in the employ of the Singer Sewing Machine Company?

A. Yes, I am.

Q. What is your job?

A. I am district manager of the Illinois-Northwest District.

Q. Does that include the City of Janesville, Wisconsin?

A. It does, sir.

Q. Tell us whether or not one of your duties is to collect information as to the activities of the competitors of Singer and, in particular, the advertising activities of Singer?

A. That's correct.

[fol. 1662] Q. Of the competitors of Singer?

A. Yes, sir.

Q. Mr. Fritzgerald, I show you this little photograph and ask you who took that photograph.

A. I did, sir.

Mr. Klots: I offer it in evidence.

Mr. Elkins: No objection.

The Court: Received in evidence without objection. This was previously received in evidence subject to identification. Now, Mr. Clerk, simply cross out the "identification". Defendant's Exhibit 146C is now received.

Mr. Klots: I only offered for the moment this small photograph which I do not believe had been previously marked.

The Court: It had all been marked as one exhibit. As I understand it, the small photograph was represented yesterday or the day before yesterday as being a photograph of a window in Janesville, Wisconsin, in which the larger paper had been displayed publicly in a storefront.

The Witness: That's correct.

The Court: And you took that photograph?

The Witness: Yes, sir.

[fol. 1663] The Court: Do you remember when you took it, about?

The Witness: It was in October, sir. The exact date I am not sure of.

The Court: Of what year?

The Witness: 1960.

The Court: Was this large printing displayed in the window at the time you took it?

The Witness: Yes, sir.

The Court: And could it be perfectly viewed and seen by passersby in the street?

The Witness: Yes, sir.

The Court: And did you, walking by, notice it?

The Witness: Yes, sir.

The Court: Did you look at it?

The Witness: Yes, sir.

The Court: And this is an accurate reproduction of what you saw publicly displayed in a store window in October 1960—on what street?

The Witness: That is Milwaukee Avenue.

The Court: In Janesville, Wisconsin?
The Witness: That's correct, sir.
Mr. Klots: I have no further questions.
The Court: Is that a big thoroughfare?
[fol. 1664] The Witness: Yes, sir. It is the main street.
The Court: And in what store window was this?
The Witness: In the Necchi dealer's, sir.
The Court: The Necchi dealer?
The Witness: Yes.
The Court: Does Singer have a shop there, too?
The Witness: Yes.
The Court: Where is the Singer shop?
The Witness: Singer is located at 30 South Main Street.
The Court: How far away from the Necchi shop is that?
The Witness: Approximately five blocks, sir.
The Court: All right.
Mr. Klots: I have no further questions.

Cross-examination.

By Mr. Elkins:

Q. When did you send this to The Singer Company?
A. In October, sir.
Q. When?
A. In October.
Q. Of what year?
A. Of 1960.
[fol. 1665] Q. To whom in Singer did you direct it? To the Advertising Department or to whom?
A. To Mr. W. W. Kingsley, General Agent of the Milwaukee agency.
Q. And he, in turn, sent it to Singer headquarters; is that the idea?
A. That is my interpretation, yes, sir.
Q. Did you examine the material, sir?
A. Yes, I did.
Q. Are the representations made by Necchi here true?
A. Some of them are, yes.
Q. Which is to say that some are false; is that true?
A. No, I don't imply that. I mean they are all true.

Mr. Elkins: Will you repeat my question, please.

The Court: I don't see any need for that. I will give the orders to the reporter.

Q. You say all of the statements on here are true? All of the representations made on this——

The Court: Don't you think it would be more fair to direct the witness's attention to some particular para-
[fol. 1666] graph that you question and ask him if he knows about it? He may be in a position to answer you and he may not. If he is not in a position to answer you he will tell you.

Q. Just what did you send to your superior, Mr. Fitzgerald; was it the small picture or the photostat or what?

A. Complete as you see it here. There was sent in to our company this small picture and this one here (indicating).

Q. You took the picture, is that it?

A. I took this one, yes (indicating).

Q. Referring then to this photostat, where did that come from?

A. This was taken by Mr. Black, who was at that time assistant manager of our Janesville Singer store.

Q. Can you read item 8 here, which states: "A needle that slants has a longer motion in going through the material. It is liable in some cases to cause trouble and inconvenience in certain sewing materials"? Is that true, sir?

A. No.

Q. The statement is not true?

A. Not in my opinion, no.

[fol. 1666a] Q. Item No. 4: "Old-fashioned type of tension adjustment." Is that a true statement of the Singer 401 machine, sir?

A. In my opinion, no. I think the tension is adequate.

[fol. 1667] Q. Does all the material of this nature from competitors that go to Singer from your area go through you?

A. It goes through me, yes, sir.

Q. May I direct your attention to paragraph 1 of this, sir—and perhaps if you read it from the larger copy it will be easier.

Speaking of the Singer 401 machine, does it not say "Automatic mechanism has seven built-in single action discs producing seven limited decorative stitches".

Is that true, sir?

A. That is correct.

Q. Isn't it true that with the 401 machine it is possible to combine the intelligence from any two of these seven discs?

A. By using—yes, that is true.

Q. That is true. So I ask you again, then, if this statement is true?

A. There are seven limited decorative stitches—single action discs producing seven, yes.

Q. Isn't it possible that the seven can produce far more than seven? Will you read the statement again, sir: "Automatic mechanism has seven built-in single action discs pro-
[fol. 1668] ducing seven limited decorative stitches."

Is that true, that the 401 can combine the intelligence from those seven discs to achieve far more than seven stitch patterns?

Mr. Klots: I submit, your Honor, that there is nothing inconsistent with the two statements. I do not see——

The Court: I do not know that this man was offered as an expert on the machines, and I do not know that you have qualified him in any way to permit this interrogation.

You are interrogating him as to new matter. If you want to do that and if you want to make an expert out of him for your own benefit, qualify him. You have not done that. He has simply testified that he took a picture of what he saw, and this is the picture.

Q. Wasn't it one of your purposes in sending this on to the Singer headquarters that it contained statements which were not absolutely true?

A. No, sir.

The Court: Did you just take this picture to show an event of competition that you were meeting?

The Witness: That is correct, sir.

[fol. 1669] The Court: And you made a report as an item of competition?

The Witness: That is correct, sir.

The Court: What is your official duty?

The Witness: District Manager.

The Court: District manager of sales?

The Witness: That is right.

Q. Are you acquainted with the Singer 401 machine, sir?
A. Yes, sir.

Mr. Klots: I take it Mr. Elkins is making this witness his own witness.

The Court: Yes, he is interrogating him as to new material.

Mr. Klots: New matter.

Mr. Elkins: There is no new matter here, your Honor. The matter we are interrogating him on is the exhibit that he put in. If it appears that it contains statements that are not true——

The Court: You are not attempting to argue with the Court, are you? I say it is a new matter, that he was produced here as a factual witness, that he took a photograph of something that was exhibited in Janesville, Wisconsin—that is all he testified to.

[fol. 1670] Mr. Elkins: If your Honor please——

The Court: Let us quit!

Mr. Elkins: All right. Am I to understand, then, that this exhibit has not come in for the truth of the material that it contains?

The Court: Objection sustained as to the form of the question. The Court sustains the objection.

Mr. Elkins: I am sorry, your Honor. That is not a question to the witness.

The Court: To me?

Mr. Elkins: Yes—or to opposing counsel, I mean to say.

The Court: As far as this witness is concerned, it is simply presented by him as being a circular or an advertisement which has been used by a competitor in Janesville, Wisconsin. It is offered by the defendant, however, to show the competition that is met and the claims which the defendant meets from other manufacturers, particularly from the Necchi machine—and to show and to have bearing upon the revelant market and the substitutes in that relevant market.

That, as I understand it, is your purpose.

Mr. Klots: That is correct, sir.

[fols. 1671-1673] The Court: Not to accomplish that purpose by this witness.

Mr. Klots: That is all.

The Court: All right.

Mr. Elkins: We have no questions, your Honor.
Mr. Klots: That is all, Mr. Fritzgerald.

(Witness excused.)

The Court: The defendant thought to accomplish this purpose through the witness Hutton and through the witness Bruder to some extent.

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[fol. 1674] FRED F. FAIRMAN, called as a witness in behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Wesely:

Q. Mr. Fairman, where do you reside?
A. I reside in Tokyo, Japan. My home address is

26 1-Chome
Fuichzawa-Cho
Setagaya-Icu
Tokyo

Q. Mr. Fairman, what is your present position?
A. I am general manager for Singer in Japan.
Q. Is that the Singer Sewing Machine Company?
A. That is the Singer Sewing Machine Company.
Q. In Japan.
A. Yes.
Q. And how long have you been in the orient?
A. Well, I was born and raised in Shanghai, and spent most of my early school life in Shanghai, China.

I came to the United States to attend schooling two years before going to college, and I graduated from the University of Nebraska with a B.S. degree in 1941.

Q. How long have you been with the Singer Sewing Machine Company?
A. I have been with the Singer Sewing Machine Company for 11 years.

[fol. 1675] Q. What part of that time did you spend in Japan?

A. I have spent all but one year in Japan. The first year would be in New York City.

Q. Prior to your employment as general manager of Singer Sewing Machine Company in Japan, what other position did you hold with that company?

A. When I was first assigned to Japan I was assigned as assistant to the manager.

In 1956 I was appointed as manager of Tokyo Central Agency.

In 1960, January 1, 1960, I was appointed general manager.

Q. Do you hold any position with the Pine Sewing Machine Manufacturing Company in Japan?

A. Yes, I am vice president and director of that company.

Q. And what is the Pine Sewing Machine Manufacturing Company?

A. The Pine Sewing Machine Manufacturing Company is a Japanese company. It is owned jointly by the Singer Manufacturing Company and the Japan Steel Company. The latter company is a Japan company. The joint ownership incidentally, is on a 50-50 basis.

[fol. 1676] The Pine Sewing Machine Manufacturing Company manufactures sewing machines which the Singer organization distributes in the orient.

Q. Do you or others under your supervision deal with the Japanese Government and with the various associations of Japanese manufacturers and exporters of household sewing machines?

A. Yes, we do. There is a constant contact—

Mr. Elkins: I object, your Honor. The answer is "Yes". It has been given.

A. Yes.

Q. What are the various associations—what are the various contacts that you have in dealings, you or others under your supervision in dealing with various Japanese manufacturers' associations and exporters in Japan?

Mr. Elkins: Objection, your Honor.

The Court: I do not know just what the purpose of this is.

What is your purpose?

Mr. Wesely: Your Honor, this is a part of the qualifications of this witness, who will testify as to the operation and the existence of the cartel—the various combinations of manufacturers and exporters of sewing machines in [fol. 1677] Japan, which are in turn directly controlled by the Japanese Government, as showing that the substantial number of machines which are exported from Japan to the United States market are supplied by this cartel, and that under those circumstances none of the acts here charged could result in the dangerous probability to monopolize or eventuate in monopolization.

Also, your Honor, we are charged with violation of Section 1 of the Sherman Act, with having restrained trade and commerce.

The government has argued—and this was taken from the record, your Honor, at page 1436, that "because of the circumstances and the purposes and the intent of the parties, that the acquisition of the Gegauf patent application was a restraint of trade." The evidence we propose to introduce through Mr. Fairman is relevant because it tends to explain the purposes and the circumstances, and the intent that the government charges is unlawful.

In its contentions the government argued—in their contention filed with this court on March 14, 1961, paragraph 9—and I will read that paragraph: "Furthermore, whether or not this combination and conspiracy is illegal per se, it is unreasonable under the facts of this case in that the [fol. 1678] restraint on interstate and foreign trade or commerce, which was intended and/or affected by this combination and conspiracy, unreasonably exceeded that degree which may have been reasonably necessary to effectuate any conceivably legitimate business purpose."

Your Honor, we submit the basic principle of the Chicago Board of Trade case is applicable here.

Mr. Justice Brandeis said in that case, "the legality of an agreement or regulation cannot be determined by so simple a test, as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains." Restraints fall under the condemnation of Section 1 only when their purpose and effect are found to have imposed an undue restraint on commerce. This is to be determined in the light of the extent and the nature of

the market, and, as set forth in Chicago Board of Trade, in the light of "the facts peculiar to the business to which the restraint is applied."

For these reasons both relevant to Section 2 of the Sherman Act charge, which the defendant is confronted with, and under Section 1 charges, the evidence we propose to [fol. 1679] introduce through Mr. Fairman is relevant and material in this case.

The Court: Objection overruled.

I am going to take it. Whether or not I will give it any weight I will determine on the entire record.

By Mr. Wesely:

Q. Mr. Fairman, would you please answer the last question which was, what contact and dealings did you and others under your supervision have with the Japanese Government and the various associations, manufacturers and exporters of sewing machines in Japan?

A. The Pine Sewing Machine Manufacturing Company belongs to the various associations that are concerned with the control of export of sewing machines from Japan.

Also as of March this year, the Singer Sewing Machine Company joined the Japan Sewing Machine Exporters Association. We joined it to assure ourselves that we would have a quota for exporting sewing machines, and with these contacts that are continued daily by people in the Pine staff and also my own staff, reports are written which are submitted to my office and thereby I get current as to what is happening.

[fol. 1680] Q. Does the Japanese Government control the manufacture and sale of household sewing machines which are exported from Japan?

Mr. Elkins: I object.

The Court: What do you object to?

Mr. Elkins: I object, your Honor, as to the competency of the witness to testify as to what is controlled by the Japanese Government, what is meant by control, and he just does not appear to be qualified to testify as to what is done.

The Court: You may cross-examine on that when it comes your time. Just make a little note of it. I will take it.

Objection overruled.

(Question read.)

A. The Japanese Government, working with or through the various associations, controls the export of sewing machines by fixing the quantity of the sewing machines which may be exported, by fixing the prices of the sewing machines—these are minimum prices—by determining which factories are permitted to manufacture machines for export; by setting detailed standards of quality which those products must fulfill before they can be exported, and by prescribing the methods of payment for the export of [fol. 1681] these sewing machines.

Q. In your answer you referred to the controls with respect to the quantity of household sewing machines.

What sort of control is that in terms of quantity?

A. The Japanese Government sets a quota—the quota being the maximum number of machines that individual manufacturers and exporters can export.

Q. Is that quota still in effect?

A. Yes, it is.

Q. And how does the Japanese Government determine the quantity of household sewing machines which an individual manufacturer can manufacture and sell for export?

A. The Japanese Government, having established a basic quota, working with the Japanese Sewing Machine Manufacturers Association, works from this quota by having—or through the association, the Manufacturers Association, an allotment on a quarterly basis to the individual manufacturers, a percentage of that basic quota. That percentage can vary from quarter to quarter, but it is generally between 70 per cent and 100 per cent. This allotment then goes to the individual manufacturers on an established formula and becomes what is known as a working quota. [fol. 1682] The quota I referred to previously is considered a basic quota or is called a basic quota, and this is considered and called a working quota.

Q. Can this quota be increased?

A. The working quota can be increased by two methods, either by the individual manufacturer earning certain incentives or also what is generally known as a special quota.

Q. How does the incentive quota system work?

A. The incentive quota system works by the government

allowing for bonuses, quota bonuses for various types of export which it wishes to encourage. The types of export which it would wish to encourage would be, for instance, the export of a complete set. A complete set would be the sewing machine head, the table and stand as compared to, say, shipments of head only.

The Japanese Government wishes also to encourage the shipment of established brand names, and there is also another bonus that is offered to manufacturers and exporters that have established contacts, that is, importers in the United States over a long period of time. They also wish to encourage exports——

Mr. Elkins: I object to that, your Honor, to this material, [fol. 1683] as to what the Japanese Government wishes to do.

The Court: Yes.

Mr. Elkins: The material, I submit, might not be in the hands of——

The Court: He can tell us what he knows of the rules and regulations, but a discussion of their purpose is immaterial.

Q. In your answer to my last question, Mr. Fairman, were you setting forth there, in your answer, rules and regulations prescribed by the Japanese Government as to the manner in which this incentive quota could be earned?

A. Yes. These are various means by which a percentage is given to a manufacturer over and above the working quota. These are the various ways in which a manufacturer can earn this incentive quota.

Q. Do manufacturers in fact earn such incentive quotas by doing these things that you just explained in your answer?

A. Yes, they do.

The Court: Are these regulations and rules applicable only to the sewing machine industry?

The Witness: As far as I know, so far as my knowledge [fol. 1684] is concerned, I would say yes, but I assume that they would have regulations for others.

The Court: You do not know?

The Witness: I do not know.

The Court: But you do know that these rules and regula-

tions are applicable to sewing machines manufactured in Japan?

The Witness: Yes, sir.

Q. Mr. Fairman, through what instrumentalities does the Japanese Government apply and maintain and establish these rules and regulations?

A. The Japanese Government mainly administers this control through its Ministry of International Trade and Industry. That is commonly referred to as MITI, and also the various associations that work closely with MITI for this purpose.

Q. Which are some of the associations?

A. Well, there are a number of associations. There would be the Japan Sewing Machine Manufacturers Association, the Japan Sewing Machine Exporters Association. Closely related to the Manufacturers Association would be the various associations that involve the parts manufacturers—the table and stand manufacturers and the arm and bed manufacturers.

[fol. 1684a] Each one of these have their own associations and would be named the Japan Parts Sewing Machine Manufacturers Association and so forth.

Then there is the Japanese Sewing Machine Foreign Trade Promotion Association, the Japanese Sewing Machine Inspection Association, and the Japanese Sewing Machine Association itself is another association.

All these associations are involved in the administration of this control.

[fol. 1685] Q. Coming back to the incentive quota system whereby a manufacturer can increase his basic quota, there was a special quota, too. How does the special quota work?

A. The special quota is a grant that is administered by the government to take care of special cases. For instance, if a sewing machine manufacturer has developed a special innovation or a special refinement for its product, he may apply to the government and obtain a special quota.

Q. Can a manufacturer sell any of his machines for export which exceed in number the total quota allotted to him?

A. No, he cannot, except for two additional ways or two exceptions, and this would be, one, if he applies to the

government to obtain a portion of a future quota from a period that is in the future, that is, beyond the current period, and another way is to purchase a quota from another manufacturer who is not using his quota.

Q. Are there separate quotas depending upon the country to which the household sewing machines are to be exported?

A. Yes, there are. The quota system is divided between [fol. 1686] Area 1 and Area 2. Area 1 consists of the United States, Puerto Rico and Canada, and Area 2 is the balance of the world.

Q. Can all manufacturers obtain manufacturers' export quotas?

A. No, only those manufacturers that have their factories registered with the government and also are members of the Japan Sewing Machine Manufacturers Association can export machines.

Q. How does the Japanese Government fix the quantity of household sewing machines which exporters, taken together, can sell for export?

A. The Japanese Government, working with the Japan Sewing Machine Exporters Association, establishes a quota, and once this quota is established they assign the quota direct to the various exporters. Forty-five percent of the total quota is assigned directly to the exporters and a further 45 per cent can be obtained by the exporters pretty much as a routine matter, provided they have orders for sewing machines, they have pending orders, and there is a balance there of 10 per cent which the government reserves to take care of the special cases.

[fol. 1687] Q. All right. Does this exporter's quota apply throughout the world?

A. No. This exporter's quota is limited now to Area 1.

Q. And what countries are included in Area 1?

A. The United States, Puerto Rico and Canada.

Q. Can all exporters obtain export quotas?

A. Only those exporters that belong to the Exporters Association may obtain export quotas.

Q. How substantial an export industry is the sewing machine industry in Japan?

A. The sewing machine industry in Japan, as far as exports are concerned, has been consistently one of the

three leaders over the past years that I have been in Japan. It has been, to my recollection, several times the second largest exporter. Frequently it is the third largest. Occasionally it is the fourth largest.

Q. Turning now, Mr. Fairman, to——

The Court: Mr. Wesely, it appears to me that if these rules and regulations find embodiment in Japanese law, it might be well for you to consider whether or not you want to place those Japanese laws and regulations in the record, particularly when here a very new and novel question is presented to the Court, it seems to me, since [fol. 1688] the government charges that the restraints were unlawful solely because they were directed against Japanese importations and particularly against a particular type of Japanese manufacture, if in fact that Japanese importation is an importation of a cartel and an American manufacturer is attempting to protect himself against the activities of one single cartel, the question is whether or not that is a violation of our law.

I don't know of any case where so narrow a charge was ever presented by the government in an antitrust suit as is presented here on account of restraints directed against a single country. You might consider whether or not you want to put these Japanese laws and regulations in evidence.

Mr. Wesely: Yes, your Honor, I will. Of course, this witness is testifying as to the practice in Japan.

By Mr. Wesely:

Mr. Fairman, how does the Japanese Government control the minimum quality of household sewing machines which are to be exported?

A. The Japanese Government, through its technological bureau, and working with the Japan Sewing Machine Association, established a detailed list of standards. These [fol. 1689] standards are called the Japanese industrial standards, and the products of the manufacturers must qualify as far as these standards are concerned before they are permitted to be exported, and these products are inspected to make certain that they do fulfill these standards.

There is another way, and that is each manufacturer must qualify his factory before he is permitted to be registered with the Japanese Government, and the government inspectors, engineers, call at the factory and inspect the factory as to its production facilities, whether it has adequate inspection facilities, whether it maintains qualified engineers. If it finds that the manufacturer is qualified, it will register that factory, but unless the factory is registered, it cannot export their product.

Q. In your answer, sir, when you referred to products, were you referring to a particular product?

A. I was referring to sewing machines.

Q. How does the Japanese Government fix the minimum prices at which the household sewing machines can be exported?

A. The Japanese Government, working with the manufacturers association and the exporters association, [fol. 1690] establishes what is generally referred to as check prices, sometimes referred to as guide prices. These guide prices then become the minimum price for—incidentally, these prices are set for different types of sewing machines, different classes of machines, and they become the minimum price at which the sewing machines can be exported.

Q. Who is it that fixes this minimum price?

A. The association recommends the price that they feel to be a reasonable price, and the Japanese Government reviews this recommendation, makes changes if it deems it necessary to make those changes, and then it finally approves and establishes prices.

Q. Are prices established both as to Area 1 and Area 2?

A. Yes.

Q. What are the various certifications which must be obtained before a household sewing machine can be exported from Japan to the United States?

A. In order to export sewing machines from the United States, your covering documents must have certifications to all of these things——

The Court: You mean to the United States, exports to the United States?

[fol. 1691] The Witness: Exports to the United States, yes, and exports to other areas as well.

A. (continuing) These documents must have the certifications to which I have been referring. In other words, the documents must have a certification to show that they are within the quota of the manufacturer who has manufactured the machines and the exporter who is exporting the machines. These certifications come in the form of chops. Chops are generally used throughout the Orient, and in Japan it is a form of a stamp that they apply to an ink pad and then to the document itself.

The Court: A seal.
The Witness: A seal.
The Court: A chop is a seal.

A. (continuing) And there must be a certification that the price is as prescribed in the check prices or guide prices. There is a certification by the inspectors from the inspection association that the sewing machine quality is up to the JIS standards, and this, depending upon the sewing machine, the form being exported, may have the chop for the sewing machine itself as being up to JIS standards, the table, the stand, so there will be more than one chop on the quality. It also must be certified by chop [fol. 1692] that the product is from a manufacturing plant that has been registered with the Japanese Government, and also an authorized bank must chop the document to certify that the payment is within the regulations of the Japanese Government.

Q. What are the minimum requirements as to payment?

A. Payment is generally required on the basis of cash, but letters of credit with 90-day terms are permitted. When I refer to cash, I mean payment by check, by cash or by letter of credit on shipment.

Q. Must each machine be certified that it is not being sold for less than the minimum price?

A. Yes, it must.

Q. And after all these certifications have been obtained are they then presented to some agency of the government in Japan?

A. After all these certifications have been obtained, they are presented to the Japanese Government immediately in order to obtain an export license. The entire file of documents covering the shipment is reviewed by the govern-

ment, making certain that all certifications have been applied, and if everything is in order, then an export license is granted. After an export license is granted, the [fol. 1693] exporter proceeds to customs where a final check is made to make certain that the shipment is in order.

Q. Are there Japanese manufacturers which own or control distribution organizations in the United States?

A. The Brother sewing machine——

Mr. Elkins: I object, your Honor. I don't know whether he is qualified for that or not.

The Court: I think he has given evidence of prima facie qualification. If he doesn't know, he will say not, and you may cross-examine him as to the basis of his knowledge.

A. The Brother Sewing Machine Company, the Nippon Sewing Machine Company, as it is known in Japan, owns the Brother International Corporation. Janome Sewing Machine Company recently purchased the New Home Sewing Machine Company and its distribution outlets in the United States. The Fujikoyo Industries is an exporter which owns the Fuji Industrial Company in the United States. I understand there are many more, but I can't recall the names right now.

Q. Mr. Fairman, what is the Japan Export Trade Rehabilitation Organization, and what is its function?

A. The Japan Export Trade Rehabilitation Organization [fol. 1694] is a public corporation, tax-exempt corporation, which promotes foreign trade of products manufacturers in Japan. They are interested in promoting the export of Japan's trade in many ways. It does research in foreign countries, it sends trade ships for display of the products of Japan, and it donates funds to, for instance, the Japan Sewing Machine Exporters Association, assisting them in one case to hire lawyers to defend their interests in the Singer case, which was brought before the Tariff Commission.

Mr. Wesely: You may examine.

The Court: Suppose we take a five-minute recess now.

(A short recess.)

Cross-examination.

By Mr. Elkins:

Q. You stated, I believe, sir, that Nippon in Japan owns Brother International.

A. The Nippon Sewing Machine Company? Yes.

Q. In Japan owns, you say, Brother International?

A. Yes.

Q. What is the full name of Brother International?

A. Brother International Corporation, I believe.

Q. And where is it located?

A. I am not sure where its head offices are.

[fol. 1695] Q. Some place in the United States?

A. Yes.

Q. How much does Nippon own?

A. I understand that it owns all the shares.

Q. All of them?

A. Yes.

Q. Are you as sure of this piece of testimony, sir, as you are as to the ownership of Janome? Is that the right name?

A. Janome, yes.

Mr. Wesely: I object, your Honor. I believe it is argumentative.

The Court: Well, the way it is framed, it is argumentative.

Q. As to your source of information relative to the ownership by Nippon of Brother International, is that the same general source of information that has to do with the ownership of Janome?

A. Generally speaking, I would say so, yes, sir.

The Court: What is this, what is known as common knowledge in the trade in Japan?

The Witness: Common knowledge. It appears in trade publications. It appears in newspapers in Japan.

The Court: In Japan?

[fol. 1696] The Witness: Yes, sir.

The Court: Is it mentioned openly at times at trade meetings?

The Witness: Yes, sir.

By Mr. Elkins:

Q. And is that the same source of your information as to the ownership of Fuji?

A. Yes, sir.

Q. Of the Fuji Industrial Company in the United States?

A. Yes, it is.

Q. In your direct testimony, sir, you referred to a basic quota and also to a working quota, is that true?

A. Yes, sir.

Q. The basic quota is laid down, is it, as to all of the machines of a particular type that will be exported, and the working quota relates to a particular company; is that about it?

A. Not exactly, no, sir.

Q. All right. The basic quota is what, sir?

A. The basic quota also relates to the individual manufacturers, and a portion of that basic quota is assigned to the manufacturers and becomes what is known as a working quota.

[fol. 1697] Q. The basic quota relates to a particular manufacturer, is that true, or isn't it an overall thing?

A. My understanding of the way that the basic quota was established and works is that the manufacturers in the association, depending upon their history of exports, their previous exports, arrive at what they consider to be a reasonable export for the individual manufacturers. These were consolidated together and then was recommended to the government, and the government then reviewed this recommendation and, making what changes it saw fit, established the basic quota which applied to all the manufacturers.

Q. The basic quota is an overall thing, then, is that true?

A. That is my understanding of it.

Q. Yes. And as I understand it, of this basic quota, 90 per cent of it, or a per cent of it, is allotted to individual manufacturers.

A. Yes.

Q. What per cent? Seventy per cent? Eighty per cent?

A. That varies from quarter to quarter. It may be 70 or 80 or 100 per cent.

Q. But it might be 70 or 80, is that it?

[fol 1698] A. Yes, sir.

Q. Then am I right in understanding that the incentive quotas and the special quotas and so forth come out of the remainder? That is, assuming that they grant a working quota of 80 per cent, the special quotas and incentive quotas come out of the 20 per cent remainder?

A. Not necessarily, because in some years the total export can exceed the basic quota.

Q. And that is in a situation where a manufacturer gets a special out of a future quota?

A. No, that is in cases where the incentives plus the—if the working quota is assigned on a high percentage basis, then on top of that you have your incentives and on top of that you have your expected quota. This might all add up to something in excess of the basic quota.

Q. Do these quotas have any effect actually on the exports from Japan? Do they have any effect on the number of machines exported from Japan?

A. I would say so, yes.

Q. The prices that are established——

The Court: They have a definite effect upon the number exported by each individual manufacturer, don't they?

[fol. 1699] The Witness: Yes, sir, sold in export.

Mr. Elkins: Thank you, your Honor. That is the precise point we wanted.

Q. Now as to the prices that are established, as you described, do they have any actual effect or are they the prices that would be used anyhow?

A. They have—certainly they have an effect——

Q. All right. Now your——

Mr. Wesely: May the witness be permitted to finish his answer?

Mr. Elkins: I thought he did.

The Court: He did not say that there were fixed prices. He said there was a fixed minimum price——

Mr. Elkins: That's right.

The Court: —below which the machines could not be exported by a particular company.

Mr. Elkins: That's right.

The Court: It is a minimum price. They couldn't go below that price.

Q. So if it were not for that quota, more machines would be imported into the United States or exported from Japan into the United States than with the quota?

A. Very possibly so, yes.

[fol. 1700] Q. Well, I thought——

A. Yes, there would.

Q. And also the price of those machines imported would be lower than they are now; isn't that true—if it were not for the minimum prices established, as you have described it?

A. I believe so.

The Court: They might. We do not know whether they would or not. How does he know? They might.

Mr. Elkins: He seemed to know about everything else that went on in Japan, your Honor. He even knew who owned what, and everything else.

The Court: This is all right if you have a jury sitting in the box listening to this stuff, but don't hand it to me, please.

Q. Did you learn from your experience in Japan that the maximum quota and the minimum price were established in order to protect domestic industries to which the exporters were exporting? Did you learn that that was the purpose of the maximum quota and the minimum price, was to protect, say, for example, the United States industry from exports, from Japan? Did you learn that, sir?

A. No, I didn't.

[fol. 1701] Q. As a United States businessman in Japan, do you have associations with our consul there?

A. At times I have, yes.

Q. And haven't you learned from your association with our representatives of the Department of State in Japan that the purpose of the Japanese Government in imposing maximum quota and minimum price is, among other things, to protect the industry in the United States?

Mr. Wesely: Objection, your Honor.

Q. Did you—is the question.

The Court: The objection is overruled.

A. The thing that I have learned is that this was——

Q. No. Did you learn that, sir?

Mr. Wesely: Your Honor——

The Court: Wait. He is answering the question. Let him finish his answer.

The thing that you have learned—go ahead.

A. (continuing) The thing that I have learned is that these minimums and maximums that you speak of was to protect the Japanese industry, sewing machine industry.

Q. Did you ever confer with Mr. Thibedaux, Minister for Economic Affairs?

[fol. 1702] A. Yes, I have.

The Court: I see you are reading from some document. Is that an exhibit, Mr. Elkins?

Mr. Elkins: No, it is not, your Honor.

The Court: Sir?

Mr. Elkins: It is not an exhibit.

The Court: Oh, it isn't before the court—excuse me. I noticed it was a photostat of a document, and I thought it was an exhibit, and that I might look at it myself.

Q. Is there anything unusual in these various practices in Japan relative to sewing machines that does not—in relation to other commodities that are exported from Japan, that is, they have the same practices, regulations, as to all exports, do they not?

A. I——

Mr. Wesely: Your Honor, I am not entirely sure that the witness understands the question.

The Court: If he does not he will tell us. Apparently he does—he was preparing to answer.

Mr. Wesely: Counsel is having a little difficulty hearing that question. I wonder if you might direct the reporter to repeat it.

The Court: Will you repeat the question.

[fol. 1703] (Question read.)

A. I am not qualified to answer for the other industries of Japan. My understanding is that the regulations and controls for sewing machines are very serious, very extreme.

Q. Unusual?

A. Unusual.

The Court: "Unique" would be the word that you are grasping for?

The Witness: I understand it to be, yes.

Q. Did you get any of the information on which you have predicated your information from Mr. Thibedaux, Minister for Economic Affairs?

A. I don't recall ever having discussed this particular subject with Mr. Thibedaux.

Q. As to the matters on which you have testified here, have you received any information from Mr. Thibedaux?

A. I am sorry, I can't recall. Mr. Thibedaux left Japan, I believe, in 1958 or 1959. It was some time ago that I talked with him.

Q. You are telling us that you have never heard it said that "Voluntary quantitative quotas constitute the primary Japanese answer to charges of over-concentration and market flooding in the United States"? You have never [fol. 1704-1710] heard that said over there?

Mr. Wesely: Objection, your Honor.

The Court: You are reading from some paper, are you, Mr. Elkins?

Mr. Elkins: Yes. We will offer it in evidence, your Honor.

Mr. Wesely: Can it be marked for identification?

The Court: Yes, have it marked for identification.

(Marked Plaintiff's Exhibit 202 for identification.)

The Court: What is this paper that you are reading?

Mr. Elkins: That is a Foreign Service despatch, your Honor, from the U. S. Consul in Japan.

The Court: Better let Mr. Wesely look at it.

Do you want to look at it?

Mr. Wesely: Yes, your Honor, if I may.

(Document handed to Mr. Wesely.)

. . . . . .

[fol. 1711] Mr. Elkins: Your Honor, it might be necessary, in view of the recent testimony to call a representative from the Department of State—I mean, all of a sudden we hear a

witness testifying as to something which I submit is somewhat beyond his knowledge, but in order, now that it is on [fol. 1711a] the record, to clear it up——

The Court: You haven't established that it is beyond his knowledge.

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[fol. 1712] UNITED STATES OF AMERICA

vs.

THE SINGER MANUFACTURING COMPANY

New York, June 12, 1961, 11 A.M.

The Court: All right, gentlemen, Mr. Fairman may resume the stand.

COLLOQUY BETWEEN COURT AND COUNSEL

FRED F. FAIRMAN, resumed.

Mr. Elkins: I believe we had marked for identification, your Honor, Plaintiff's Exhibit 201 and we had offered it in evidence.

The Court: We had some trade circular.

Mr. Elkins: A dispatch from the Department of State.

The Court: Which represented this Japanese cartel to be in the nature of sort of benevolent despotism, benevolent dictatorship.

Mr. Elkins: I won't agree with that characterization, your Honor, but the Court had asked if there are any objections. I would like to dispose of that, if we may, please.

[fol. 1713] The Court: You will recall that there was a paper marked for identification before we adjourned.

Mr. Pettit: Yes, your Honor.

The Court: Which apparently emanated from some trade agency of the government, and it has been offered in evidence.

Mr. Wesely: Is this Government Exhibit 202 which had been marked for identification?

Mr. Elkins: I believe it is 201.

The Clerk: 201 is the instruction book. This is Government Exhibit 202.

Mr. Wesely: No objection to the receipt of 202 in evidence, your Honor.

The Court: Let me see it. Maybe I have an objection. We have enough things in the record now.

So that I may understand just what position the Court may take with reference to this document which is now offered in evidence, does the government offer it in evidence as proof of its contents, too?

Mr. Elkins: Yes, your Honor.

The Court: And does the defendant consent that it be received in evidence as proof of the factual statements [fol. 1714] contained therein?

Mr. Wesely: Your Honor, it is a comprehensive document. For example, on page 2, there are clear hearsay on hearsay statements. Furthermore, for example, the second enclosure deals with a number of matters which do not possibly have any connection at all with this case, cotton textiles, plywoods——

The Court: Of course, we are not going to concern ourselves with those other items of commerce, but——

Mr. Elkins: As to those other items of commerce, your Honor, this witness was asked whether or not the export controls in Japan related to articles other than sewing machines.

The Court: Now I will continue: for instance, one part of this document purports to contain statements as to various Japanese laws. Am I to accept these statements as being accurate?

Mr. Wesely: Your Honor, to the extent that we can now determine, these statements are accurate statements, but they are not complete. These laws are quite comprehensive, and this is a three-page enclosure.

I would like to call your Honor's attention to the intro- [fol. 1715] duction to this statement of the law, which is enclosure 1, the legislative basis for Japan's production and export controls. In the first paragraph, which sets forth the general summary of this document, it says:

"These laws, together with the amendments, have, in effect, made it possible for industries in the export field to act in concert to limit production, determine methods of

sales, determine prices, standardize quality and, in general, to take such actions as are considered necessary for the stabilization of an industry and to meet foreign export commitments."

The Court: Yes, I have read that. It is the latter part of that first paragraph under "Introduction." All right, I think I understand now that I am to receive this in evidence as being a statement insofar as it concerns relevant matters, being a factual statement subject to such additional proof as either side wants to present by way of addition. Received in evidence by consent.

(Government Exhibit 202 for identification received in evidence.)

[fol. 1716] Cross-examination continued.

By Mr. Elkins:

Q. Mr. Fairman, are you acquainted with any material published by the United States Tariff Commission having to do with Japan's foreign trade, and more particularly as it relates to the reasons for export controls?

A. This is——

Mr. Wesely: Your Honor, we object. This is calling for an answer, even in a preliminary form, as to the reasons for export controls. Mr. Fairman is a businessman in Japan, and in that capacity, when we last met, set forth what his understanding in his capacity was as to purpose of these laws. We think that he has answered these questions on this line.

The Court: This is cross-examination. I will permit it. Objection overruled.

The Witness: Would you repeat that question?

The Court: We are here concerned, Mr. Elkins, as I want to point out—we are not concerned with the purpose of a foreign law; in fact, it is none of our business except in so far as it affects the United States commerce. If this law does affect United States commerce, importations into the United States, and attempts to regulate minimum prices or maximum prices or quantities, it imposes [fol. 1717] restraints on imports, irrespective of the benevolent purposes which prompted its adoption. It is a

restraint on the commerce of the United States since it affects our imports, therefore, our domestic market.

You know from your long experience in the antitrust field that it has forever been a defense of one charged with a monopoly or restraint, the purpose which activated them and the motives and the purposes which they sought to accomplish, beneficient or benevolent. We are not concerned with the purpose of these laws. It is, did they have an effect on the United States commerce by regulating and limiting importations into the United States.

Mr. Elkins: We are concerned, your Honor, with the testimony of this witness, and the picture that has been created through this witness, and our purpose for this interrogation is to explore his knowledge of the situation inasmuch as there was testimony given.

The Court: I am going to permit you to do that, but my observations were prompted, as I said at one of our very recent sessions—that is, here the government charges an unlawful act on the part of the defendant as directed only against Japanese importations.

[fol. 1718] Now if those Japanese importations are importations of a government-controlled monopoly or cartel, I do not know that the antitrust laws can be used for such purpose. I don't know that even if the charge that the government makes here against the defendant was in fact true—and I have nothing that leads me to that conclusion as yet—whether or not the antitrust laws of the United States can be used to protect a cartel of a foreign government which affects and interferes with the importations into the United States and the price and the quantity of those importations.

Mr. Elkins: Of course, your Honor, we do not accept this as being any kind of cartel whatsoever—defining a cartel for this purpose, I suppose, as being some kind of unlawful combination. We do not accept that.

The Court: A cartel would be an agreement between one or more manufacturers in regulating price, dividing territory, providing for an unlawful exchange of patent information and patent licensing, or assigning quotas.

That is generally my understanding of cartels—and I think it must be yours, too. All right.

[fol. 1719] Mr. Elkins: This line of interrogation——

The Court: I am going to permit it. Let us get back. I simply wanted to point out, as you know it is my custom, the problems that come to the Court's mind as to the admissibility of evidence. I am sure those things must come to your mind, too.

Mr. Elkins: That is not so, your Honor. I have no problem.

The Court: With your vast experience.

Mr. Elkins: With my vast experience, I have no problem. When I say "vast experience" I am quoting your Honor because I cannot accept it as being true.

The Court: I might say I consider you an expert. I have seen you work here for a number of years very effectively and very efficiently and competently. All right.

(Question read.)

Mr. Wesely: Your Honor, I would like as an objection to point out to the Court that this is exceeding the scope of Mr. Fairman's direct testimony.

The Court: I am going to permit it. You have an exception. Objection overruled.

A. I cannot recall reading any documents issued by the [fol. 1720] United States Government on this subject. I have read on this general subject in the newspapers.

Q. In relation to the export controls in Japan, have you heard any reference to the United States anti-dumping statute?

A. I have, yes.

Q. And haven't you heard that one reason for these controls on setting a maximum quota and a minimum price is to avoid any possible violation of the United States anti-dumping statute?

Mr. Wesely: Objection, your Honor.

The Court: Overruled.

The Witness: Would you mind repeating that question.

(Question read.)

A. I have heard that the Japanese Government has been concerned with the possibility of causing some criticism in foreign markets which might do damage to its own industry.

Q. In relation to exports.

A. In relation to exports.

Q. And wouldn't that damage be regulations, for example, by the United States Government to restrict imports from Japan?

[fol. 1721] The Court: I think you are getting pretty far afield. Ojection sustained.

I have permitted your questioning so that you might test this gentleman's knowledge on the subject. I think he is pretty well informed.

Mr. Elkins: I have no further questions.

The Court: Any redirect?

Mr. Wesely: May I have a moment, your Honor?

The Court: Yes.

Redirect examination.

By Mr. Wesely:

Q. Mr. Fairman, do the various export controls of Japan about which you have testified apply to the entire Japanese sewing machine industry?

A. No, they do not. They apply to the household sewing machine, but in case of industrial sewing machines, which takes up a very, very minor part of the exports, there are not these controls.

Q. And what is the principal source of funds expended by the Japan Export Trade Rehabilitation organization?

A. The Japanese Government.

Mr. Wesely: I have no further questions, your Honor.

The Court: Thank you.

(Witness excused)

[fol. 1722] CHARLES F. BRUDER resumed.

Mr. Klots: If your Honor please, I have one or two questions of Mr. Bruder just to clear up some things we sort of left up in the air.

In the first place, you will remember we offered in evidence as Exhibit 166 for identification a list of prices

at which straight stitch machines could be bought throughout the United States, and it was objected to by the government, and the government was asked to consider whether they would reconsider that objection and not object to it on the ground of competency.

Of course we are not asking them to consent to it on the ground of relevancy.

I would like to know whether the government is willing to withdraw its objection on the ground of competency of that list.

It is entirely similar to the list that was already agreed to in the stipulation of facts as to other types of machines, but it relates to straight stitch machines.

Mr. Elkins: We object to it, your Honor.

Direct examination continued.

By Mr. Klots:

[fol. 1723] Q. Mr. Bruder, have you recently had occasion to ascertain prices at which straight stitch machines which will take zigzag attachments are being sold in retail markets?

A. Yes, sir, I have.

Q. Tell us what you did in that regard.

A. I personally went on a little shopping tour and visited several outlets in Westchester County and several in Bergen County.

Q. And did you obtain the prices of certain straight stitch machines which take zigzag attachments, and if so will you tell us what those machines were and what the prices were.

[fol. 1724] A. I shopped a sewing machine store in New Rochelle, New York, called Leiner's, and I told the proprietor that I was interested in obtaining a machine for my wife for a present. I found that I could get a very special buy because this dealer "had just obtained a school order at a special price" and he had a couple of machines left that I could have "at the special price," the Necchi plain stitch or straight stitch Supernova for $136.95.

At another dealer in Mt. Vernon, New York, I learned that the Necchi Supernova was $169.50 in his store, and in an effort to get a discount I told him I had a good used

machine, and he said I might be able to get $20 or possibly $30 for that machine if it was an especially good one, after he saw it.

Q. Both of those machines were straight stitch machines?

A. Yes, sir. He also had in this store a Pfaff straight stitch machine which was regularly $169.50, but he could give me a $40 allowance on that, making it $129.50.

At Wakefield's in Yonkers, New York——

The Court: Wakefield is in the Bronx.

A. (Continuing)—I found I could get a Pfaff No. 6 [fol.1725] which seemed to have a different finish on it than the other Pfaff machine which I saw. $149.50 with an allowance of $20 for an old machine.

At Winthrops, which is one of a group of three stores or chain of stores in northern New Jersey—I visited the Winthrops in Hackensack—I found that the Necchi Supernova was $229 and he didn't even want to talk about an allowance on the Necchi Supernova.

Q. Is that a straight stitch machine?

A. That was a straight stitch machine. He also had a machine there with the Winthrop name on it that I noticed from the identification, after looking carefully, was made in Japan. This, too, was a straight stitch machine, and the list price on it was $249. But, when I told him that I thought that seemed very high, even higher than the Necchi, and pulled out my wallet and wanted to know what we could really do, cash on the barrelhead, I found I could get a $60 discount, so that the net price was $189.

I also visited Sears Roebuck in Hackensack, and I find that you can buy a straight stitch portable, Model No. 76, for $126.95 which will take the Greist decorator attachment which they also sell through Sears' catalog and stores.

[fol. 1726] Q. Does that cover your shopping tour?

A. That pretty well covers it, yes, sir.

Q. Now, Mr. Bruder, I show you this sheet tabulation which purports to show the production figures and the sales figure of Singer household sewing machines for the years 1947 through 1959 and I ask you, Mr. Bruder, whether you have personally checked from the records of the company itself the figures on this list except, I believe, certain figures

that are already in evidence. Tell us which ones you have not personally checked.

A. I personally checked all of the production figures from the years 1947 to 1959, inclusive, by examining the year end reports which are kept factory by factory of their production for the year, and I had adding machine slips placed on each pile of reports and I checked the adding machine entries against the figure on the actual report in arriving at these totals. I did the same thing on sales 1956, 1957, 1958 and 1959. I did not go back of that on sales.

Mr. Klots: Would you read the answer, Mr. Reporter?

(Answer read.)

Q. Have you here a memorandum of these sales figures [fol. 1727] that you checked?

A. I am sorry. I do not understand your question, sir.

Q. Have you a memorandum which shows which of this group of sales figures on this exhibit? And sales figures appear from '47 to '59. Do I understand you to say that you checked the ones from '52 on or the ones from '47 on?

A. No, I did not check the early years. I have some notes, actually, in my briefcase——

Q. That will show you just which you checked?

A. If I could refresh my memory of the ones I checked.

(Briefcase handed to witness)

Q. I call your attention to the fact that the sales figures for '52 to '59 are already in evidence and——

A. Well, I did check them out and I find now, when I go back and look at my notes, that I subsequently went back and checked out from 1947, '48, '49, '50, '51 and '52 on a second check.

Q. So that you made a check of those early ones and rechecked the ones that were already in evidence.

A. Against our regular year end forms 246.

[fol. 1728] Q. And those figures that you checked appear on this document that I have just handed you?

A. They are all the same.

Mr. Klots: I offer it in evidence.

Mr. Elkins: We object to that. In the first place, it relates to all household sewing machines of Singer, and

this case does not relate to all household sewing machines of Singer.

The Court: We will receive it in evidence. Objection overruled.

Mr. Elkins: We also object, your Honor, on the best evidence rule.

The Court: Overruled.

(Received in evidence as Defendant's Exhibit 172.)

The Court: You gathered this information from the records, and this is an extract of the records kept by the Singer Company in the regular conduct of its business?

The Witness: Yes, sir, I did.

Mr. Elkins: Inasmuch as this does group together all sales of Singer of household sewing machines, going far beyond the subject matter of this complaint, may we ask [fol. 1729] for what purpose it is being offered, your Honor?

The Court: Most likely counsel will accommodate you with an answer.

Mr. Klots: Yes, I think it's purpose is to show what has been the trend of the Singer sales over the course of the years, how they have increased in spite of competition, all different types of machines.

There is another purpose, your Honor. The chart, which we intend to put in evidence, gives the figures of the Census Bureau as to all American-produced machines, but it does not separate the ones that are not Singer machines. So the only way you can find out the ones that are not Singer-produced machines is to take the Singer production figures and subtract them from the figures that appear on the Census Bureau figures.

The Court: Let me see if I understand this Exhibit 172. You have a column here headed "Production." Does that mean that the Singer Sewing Machine Company produced in its United States factories the number of machines listed below?

The Witness: That is right, sir.

The Court: Now the last column which is "Sales." Does that mean that that is the total number of Singer sewing [fol. 1730] machines sold in the United States, irrespective of where they were produced or manufactured?

The Witness: That is correct. These are the unit sales of household sewing machines only (indicating).

The Court: Of Singer machines.

The Witness: Singer household sewing machines.

The Court: So that, if I read this correctly—it runs back since 1952—Singer sold machines, manufactured by it abroad, in the United States in excess of those which were manufactured here.

The Witness: That is right, sir. For example, from recollection, the first year that we sold machines imported from one of our factories abroad was in 1949 when our sales, as you see, were——

The Court: 104,000 more than your production.

The Witness: That's right, and that was the year that we had a strike, again from memory, in our Elizabethport factory.

The Court: So that for 1959 you sold almost 200,000 machines—more than that, 220,000 machines—which were manufactured abroad, sold them in the United States.

The Witness: Yes.

[fol. 1731] The Court: All right.

Mr. Klots: Just another question here about this chart which is already in evidence. I just wanted him to tell us what type of machines these various ones are because they include machines we have not talked very much about yet, and this is Exhibit 162.

The Court: May I just interrupt for a moment? Wouldn't this last exhibit have a substantial bearing on whether or not there are exceptions to government's contention that Singer entered into an unlawful conspiracy with Gegauf and with Vigorelli, even with Messerschmitt, when it shows that Singer was itself bringing in 220,000 machines which it manufactured in Europe, that they were engaged in very active competition with those with whom you allege they were conspiring?

Mr. Elkins: The answer is no, your Honor, I don't attach any significance to it.

The Court: Of course, that is a consistent answer, but I just point that out to you. Here is something that strikes me very forcibly. The government alleges a conspiracy between Singer, Gegauf and Vigorelli to stop Japanese [fol. 1732] importations of a particular type, that they

were working together with these European manufacturers. Yet here you have Singer engaged in active competition with their two alleged conspirators, bringing in over 220,000 machines manufactured in Europe in one year, in 1959.

Mr. Klots: I think your Honor has a good point there.

Mr. Elkins: I see nothing inconsistent, your Honor.

The Court: All right. Ordinarily you do not get these conspirators hitting one another on the head that way, you know. There is a little bit of harmony of action between them. All right.

Mr. Elkins: I would say ordinarily conspirators make their conspiracy and then go ahead and sell their machines. We don't say that Singer agreed to get out of the business or that Gegauf agreed to get out of the business.

The Court: Just that Singer conspired to keep out the Japanese machines from the United States.

Mr. Elkins: That takes care of the conspiracy allegation, your Honor, yes.

By Mr. Klots:

[fol. 1733] Q. Mr. Bruder, if you will turn to this chart, Exhibit 102, I just want to ask you what type of machines these various ones are. We know what the 401 is and we know what the 319 is. What was the 185?

A. The 185 is a straight stitch machine.

Q. What is the 99?

A. And the 99 is also a straight stitch machine. Both the 185 and the 99 are sometimes called a three-quarter size head.

Q. The 301 I think we know.

A. Slant needle, straight stitch.

Q. Yes. The 221 is what type?

A. It is a small, featherweight portable straight stitch.

Q. And the No. 15 is what?

A. 15 is also straight stitch.

Q. The 201 is what?

A. Straight stitch.

Q. And the 66?

A. 66 is straight stitch.

Q. And the 306?

A. The 306 is a zigzag machine.

Q. What is this miscellaneous? This is in 1958. Well, [fol. 1734] it is in every year, a small miscellaneous group. What would that cover?

A. This would cover models which had been discontinued and where the stocks and sales were so small that they are lumped together.

Q. What is the 192?

A. The 192 is a straight stitch machine.

Q. I think I have covered all the ones that we haven't already talked about.

A. Yes.

[fol. 1735] Mr. Klots: If the Court please, we had marked for identification Defendant's Exhibit 164 which was a news advertisement which we said was to be published in certain newspapers. We had no proof at that time that it had been published in any particular newspapers. I have here two newspapers in which that advertisement appears. One is the Journal-Herald of Dayton, Ohio for June 15, 1960, and I would like to offer that in evidence.

Mr. Elkins: No objection to that.

Mr. Klots: And the other is the Cincinnati Post for June 15, 1960 on page 23. I don't think we want the whole Post, so I would like to offer page 23 where that particular advertisement appears.

Mr. Elkins: No objection.

The Court: What is that page proof number in evidence?

The Clerk: The proof is 164.

The Court: Then make these newspapers 164-A and 164-B. In that way we will have them all related.

(Received in evidence respectively as Defendant's Exhibits 164-A and 164-B.)

Mr. Klots: Counsel for plaintiff have been good enough to say that they would add a paragraph to the stipulation [fol. 1736] of facts which relates to advertisements that were published in mail order house catalogs, and this had been revised, and in this form I understand counsel are willing to sign the stipulation. Every one of those advertisements appearing annexed to that stipulation has been checked, as I say, by my office, and they appear in the catalogs indicated. I understood from Mr. Weinstein that

that would be agreeable to them. We talked over the telephone on Friday.

Mr. Elkins: The stipulation is not in the agreed-upon form, your Honor.

Mr. Klots: I would like to know in what respect it is not.

The Court: Suppose you do that off the record and during the recess.

Mr. Klots: Yes. I must say I am perfectly amazed because we put it in exactly the form agreed upon.

The Court: I prefer that these discussions concerning stipulations be off the record. All right, let's proceed with something else in the interim.

By Mr. Klots:

Q. Mr. Bruder, one more question. Do you know of any instance where customers have exchanged a machine for the machine-carried multi-cam device for straight stitch [fol. 1737] sewing machines?

A. Yes. In the course of my travels and visits to Singer shops I have run across a number of examples.

Q. Can you give us one?

A. Yes. I was out in Columbus just a couple of weeks ago and made a particular note of one example that I found there. In examining the shop and asking questions about their business, I noticed a Stradivaro, so-called built-in multi-cam zigzag machine, being offered for resale as a trade-in for $49.95, and the machine appeared to be in such excellent condition that I asked to see the records on it. I wanted to find out what had been allowed, whether they were exceeding company allowances and the circumstances of the sale. I found that the machine had been traded in on July 2, 1960 from a party by the name of Carr residing at 754 Robin Wood, Columbus, with an allowance of $9.95 given for the machine on a sale of a 185 Budget straight stitch portable. The customer claimed she had paid $169.95 for the machine less than six months before.

The machine was sold to a Mrs. Kinser, that is, the Stradivaro machine was subsequently sold to Mrs. Kinser, 637 Pierce Avenue, Lancaster, Ohio for $49.50.

Q. After it had been put in condition?

[fol. 1738] A. After it had been tuned up and put in condition. That was early in 1961. Mrs. Kinser, in May,

1961, traded in this Stradivaro built-in multi-cam machine and was given the same $49.50 that she had paid for it on a 404 with a zigzag attachment. This is just one example in which I made detailed notes of what we do find occurring.

Q. Mr. Bruder, one other question and then I am through. I think you have already testified in the record that Sears, Montgomery Ward, Spiegel and Alden's were mail order houses selling sewing machines in the United States. What have you to say as to the volume of business that these dealers do as compared with other dealers in the United States?

Mr. Elkins: Objection, your Honor.

Q. Just in general.

The Court: Overruled.

A. Sears Roebuck, next to Singer, does by far the largest volume of sewing machines in the United States. Based on the best information which we can obtain, we believe that their sales run in the neighborhood of 200,000 units a year. Montgomery Ward, I would place right after Sears, although their sales I don't believe run more than 75,000 to 90,000 a year.

[fol. 1739] Q. Never mind the figures; just go ahead.

A. Spiegel's and Alden's are both substantial distributors of sewing machines.

Mr. Klots: I have no further questions.

Cross-examination.

By Mr. Elkins:

Q. Did you refer to that Stradivaro as a so-called built-in cam machine, sir?

A. Yes, I did.

Q. Does it have built-in cams?

A. Yes, it does.

Q. And then it is a built-in cam?

A. The only reason I used the expression——

Q. It is a built-in cam?

A. It is an incomplete description of a sewing machine.

Q. It is a built-in cam?

A. It has a built-in cam device.

Q. I would like to direct your attention, Mr. Bruder, to Defendant's Exhibit 154, which is an advertisement of the

401 machine about which you have testified; is that right, sir (handing witness)?

A. Yes, sir.

Q. Isn't it a fact, sir, that this advertisement emphasizes in its text those features which appear in a household [fol. 1740] sewing machine for the first time?

A. Not all of them, and they also——

Q. I did not say it was all-inclusive.

A. Right.

Q. The question was, does it emphasize those features or features which appear for the first time in a household sewing machine?

A. No.

Q. And are——

A. No. You used the expression "household sewing machine", right?

Q. Yes, that is right.

A. Take for example "First automatic with a slant needle and gear motor drive".

This feature had appeared in a household sewing machine but not a swing needle machine.

Q. Very well. It emphasizes, does it not, the things that are first in this 401 machine?

Mr. Klots: May I ask what he means by "emphasize"? Does he mean "point out" or what does he mean by "emphasize"? I thought I might ask counsel to explain that.

Mr. Elkins: I mean emphasizes. I cannot find a better word for it.

[fol. 1741] Q. Doesn't this say——

The Court: "Emphasizes" means to put an accent on it.

Mr. Elkins: Yes, that is about it, right.

The Court: To stress.

Mr. Klots: Doesn't that involve a conclusion?

The Court: I think it does. Suppose you reframe it.

Q. Doesn't the text of this advertisement underneath the three pictures—and the only three pictures that are shown—state "First automatic with a slant needle and gear motor drive", et cetera?

A. Right.

Q. "First automatic with a drop-in bobbin in front of needle", and so forth?

A. Right.

Q. And "First automatic with a snap up stitch chart on top that lets you 'tune' knob for all kinds of fancy stitches".

A. Right.

Q. So that every feature there described is a "first", is it not?

A. On that kind of a machine, yes, sir.

Q. In this advertisement, yes.

[fol. 1742] Now at the time of this advertisement, Singer was not the first to have a built-in cam machine, was it—or this 401 was not the first machine to have built-in cams, was it?

A. No. You mean built-in multi-cam.

Q. Built-in plurality of cams, yes.

The 401 was not the first machine to have a built-in plurality of cams, isn't that true?

A. Speaking from the point of view of when it was placed on sale to the public?

Q. Yes, yes.

A. That is right, it was not.

Q. Brother International had a built-in cam machine on the market in 1954, did it not?

A. I don't recall.

Q. Do you recall that Brother International had a built-in cam machine?

A. Yes.

Q. Do you have any recollection as to when it was put on the market?

A. No, I am sorry I don't. I would have to go back and check the magazine ads or something of that kind.

Q. Do you recall that it was before Singer put its 401 [fol. 1743] machine on the market?

A. Yes.

Q. Do you recall that it was before Singer puts its 319 machine on the market?

A. I think it was but I wouldn't—I couldn't be sure without verifying it.

Q. You are acquainted with the Singer sales, are you not?

A. Yes, sir.

Q. And perhaps it would be accurate to say that you are the man primarily responsible for the Singer sales?

A. Yes, sir.

Q. Is it true that you would be acquainted with any machine of a competitor that was hurting Singer or hurting the Singer sales?

A. I try to keep informed on all competitive conditions, yes, sir.

Q. Now may I direct your attention, if I may, to that part of Defendant's Exhibit 154, the 401 ad that states "First automatic with a snap up stitch chart on top that lets you 'tune' knob for all kinds of fancy stitches", and ask you, sir, as between the snap up chart and the fact that the operator may tune in a stitch, so to speak, and, [fol. 1744] as you say, merely by turning a dial, which would you say was the most significant feature of the two?

A. Between the knob and——

Q. Between the snap up chart and the dial or knob, which permits the operator to, as your ad says, "tune" in a stitch or getting it automatically by merely turning the knob.

A. Well, it is—the ad states it is the combination, the convenience of having the eye-level stitch chart as the guide to the tune-in knob.

The Court: You mean you have a chart right in front of you?

The Witness: Precisely.

The Court: You have a visual guide readily available?

The Witness: Eye-level, visual guide readily available rather than turning to a separate guide in the drawer of the machine or instruction book.

The Court: By that you mean the little flip-up that flips up at the top?

The Witness: Yes, sir, this (indicating). This is the key, how to tune the two knobs.

Q. It would be possible, would it not, to put a chart of [fol. 1745] some kind on a 403 machine which would identify the stitches in relation to the various cams?

A. Yes, sir, it would be.

Q. So as between the snap up chart, sir, and the built-in cams of the 401 machine, and the ability of the operator to change a stitch by moving a dial, which in your opinion is the more significant feature?

A. I am sorry, you have lost me there—would you reread the question, please?

(Question read.)

A. Well, I am not trying to quibble but——

The Court: What do you mean——

I don't really get what you have in mind, Mr. Elkins. What do you mean by the more "significant feature"?

Mr. Elkins: If your Honor please——

The Court: Significant from what point? From the point of view of sales? From the point of view of operation?

Mr. Elkins: In short, your Honor, I am using the expression as it has been used, oh, at least two dozen times in the trial to date—and I mean most significant in relation to sales, in relation to the consumer, in relation to the machine and its salability.

[fol. 1746] The Court: You mean which induces—which is most attractive—by "significant" you mean which feature of the machine is most attractive to a potential buyer?

Mr. Elkins: I mean which feature of the machine is the most significant in relation to the salability of the machine. I cannot say it any differently, your Honor.

The Court: I do not know what you mean by "salability of the machine".

Objection sustained because it is indefinite and I cannot understand it.

If the witness understands it he may answer it.

Do you understand what he means?

The Witness: I don't quite get it. I tried to explain that they go together.

Q. Haven't you previously testified, sir, as to the most important features of the 401 machine—haven't you, honestly now?

A. Yes, I have.

Q. All right. So having that testimony in mind, can you tell me now which is the more important feature here: the snap up chart or the dial which enables the operator to tune in a stitch?

[fol. 1747] Can you do it?

A. I am afraid I can't. You see, you are trying to—as I understand the question——

The Court: Speak out. Tell him what you have in mind. He is trying to what? What do you have in mind?

A. You are separating two things that go together——

Q. I understand that.

The Court: Wait. Let the witness finish. Speak out. We are not here to match wits.

Mr. Elkins: I hope not.

A. May I illustrate?

[fol. 1748] The Court: Yes, certainly. I want to find out.

(The witness leaves the stand and demonstrates on a machine.)

The Court: The witness steps down to the machine, 401, and places his hand in front of the snapup chart, obscuring it from view.

The Witness: If this chart is obscured from view, the operator just has nothing but trial and error to determine the stitches to come from the machine. She is just groping in the dark.

The Court: Unless she memorizes those various numbers with the patterns.

The Witness: Precisely, so they go together. That is all I am trying to say.

Q. Thank you.

(The witness resumed the stand.)

Q. Don't you have with other machines a directory that informs the operator what stitch she will get with what particular cam?

A. I don't remember specifically whether that is in the instruction books, but the fashion dises have an identification on them that shows the basic pattern that that dise will create.

[fol. 1749] Q. It is a simple matter, is it not, to acquaint the operator with what stitch she will get from the use of a particular cam or combination of cams without putting it necessary on a snap-up chart?

A. You can have it in an instruction book. You can have it on a Celluloid wheel, but the point is we put it on there

because it is a valuable and convenient and attractive feature, we believe.

Q. Very well. So we have determined that it can be done in other ways, and that here with the 401 machine you have done it by putting it on this snap-up chart which has been described?

A. That's right.

Q. In relation to the salability of the machine, which would you say was the more significant feature: the snap-up chart or the fact that you may, as you say in your ad, "Tune in a stitch by switching the dial which appears in front of the machine"?

A. I repeat that the value of the tuning dial feature is related to the chart which makes it easy for the woman to tune the two dials that must be tuned. This is the sales approach that we have used—rightly or wrongly.

Q. Well, right now you cannot tell me, or you cannot [fol. 1750] answer the question any better than you have thus far?

A. I am sorry, sir, no.

The Court: You don't have to be sorry about it.

Q. May I direct your attention to Defendant's Exhibit 158 (handing). My copy is a photostatic copy, but can you tell us from that photostat what machine is advertised there?

Mr. Klots: What is the exhibit number?

The Court: Give him the original of 158—a picture of the model—the female model with the colored dress.

(Document handed to the witness.)

A. Yes, I recall it.

Q. This advertisement would be charged to the Singer 401 machine, wouldn't it?

A. Yes, it would be.

Q. The banner line on that ad is "What's the Newest Slant on Holiday Sewing?" is it not?

A. Yes.

Q. And it relates in its text to the slant needle, isn't that true?

A. Yes, sir.

[fol. 1751] Q. You also have a slant needle in the 403 and the 404 machine, isn't that so?

A. Yes, sir.

Q. Now addressing ourselves to the 403 machine, doesn't this advertisement present in its text features which are in the Singer 403 machine?

A. Yes, sir.

Q. And yet you testified that no part of the cost of this ad is attributed to the Singer 403 machine.

A. That is true.

The Court: What significance does that have? First you lead him into making such a statement and then you want to question it. What is its relevance at all? I do not see what it has to do with this case.

Suppose they charged it to the 404? Suppose they did not charge it? I don't see——

Mr. Elkins: If there is significance to the testimony on direct as to the amount of money that is spent or was spent in advertising the 401 machine, the significance of this is to show the allocation of advertising funds is, at the very, very best, an inaccurate and loose and frequently unjustified allocation, in that the very advertisement which is charged to the 401 might feature in its text those parts of the—those things which are common to the 403 machine, [fol. 1752] which are common to the 404 machine.

The Court: But the only machine that is depicted in this advertisement is the 401.

Mr. Elkins: That's right.

The Court: Here, you take this other exhibit, Exhibit 200, and you have got the three slant-needle machines shown. I suppose——

How did you apportion this amongst the three machines?

The Witness: Apportioned it amongst these three according to the space taken for each.

The Court: There has to be some arbitrary apportionment. I do not see that it is too vital to this case, anyway.

Mr. Elkins: Well, we would agree with that, your Honor. We agree that it is completely arbitrary and enough to give a shock to any kind of accountant who would look for it.

Mr. Klots: We don't agree with that, of course.

Q. Doesn't this advertisement which is referred to, De-

fendant's Exhibit 158, generally advertise the Singer sewing centers?

A. Yes, we advertise our name in our ads.

[fol. 1753] Q. That's right, and this particularly advertises the Singer sewing centers, too, doesn't it, in addition to your name?

A. This is our traditional sign-off on all advertising, yes.

Q. If a customer came into the store in response to this advertisement and bought a 403 machine, you would not call up your accountant and have part of this ad attributed to the 403, would you?

The Court: Objection sustained. The Court's objection. Next question.

Mr. Elkins: I do not see why we are not entitled to go into it.

The Court: The Court does not wish argument on it. Next question.

Q. You testified, did you not, Mr. Bruder, before the United States Tariff Commission on a hearing that was held in relation to the Singer petition?

A. Yes, sir, I did.

Q. And that hearing and your testimony was before the complaint was filed in this case, isn't that so?

A. Yes, sir.

Q. In discussing the Singer 401 machine you testified, did you not, at page 206:

[fol. 1754] "This machine incorporates a multiplicity of cams with a simple tuning dial on the front, the kind of a tuning dial that any woman might use on a television set or any other automatic apparatus."

And you went on to say:

"I might compare the advantages of that tuning dial to the advantages of a record player which plays eight or nine records compared to going over and placing one record on at a time."

You so testified, sir?

A. Yes, sir.

Q. In that testimony you were pointing out for the bene-

fit of the Commission, were you not, the advantages of a machine-carried or a built-in cam machine over the replaceable type cam machine?

A. Yes, sir.

Q. And you demonstrated the difference, did you not, by an analogy to an automatic record player as opposed to a record player, where the record had to be changed for every different tune?

A. As a spur-of-the-moment analogy.

Q. That is what you did, is that right?

[fol. 1755] A. Yes.

Q. All right. You also testified, did you not, at page 302, in relation to the 401 machine:

> "This machine gives the woman the versitility of a combination of cams, and the further advantage that even if she only wants to use one at a time, she is not opening up the lid, removing the individual cam and replacing it with another cam.
>
> "It seems to me the advantages of this are obvious."

You so testified, did you?

A. Yes, sir.

Q. And the first part of that testimony, when you stated "This machine gives the woman the versitility of a combination of cams"—you were referring, were you not, to the fact that the Singer 401 machine has two followers which can engage different cams and combine their intelligence?

A. Correct.

Q. Now you went on to say in that same testimony: "even if she only wants to use one at a time, she is not opening up the lid, removing the individual cam, and replacing it with another cam"?

[fol. 1756] A. Right.

Q. And there you are comparing for the benefit of the commissioners of the Tariff Commission a built-in cam or a machine-carried cam machine with a replaceable cam machine, isn't that true?

A. Correct.

Q. And in relation to the latter statement, as we have just read it, you went on to say:

"It seems to me the advantages of this are obvious," did you not?

A. Yes.

Q. Now in all of this testimony may we assume that you intended to give a true and honest impression to the commissioners of the Tariff Commission?

A. Of course.

Q. Now in further testifying as to the 401 machine in relation to a replaceable cam machine, you testified, did you not, at page 299:

> "The chief difference would be that with the built-in cams in the 401 Slant-O-Matic, the operator is not restricted to the use of one cam or a fashion disc but can use a combination of cams, and someone who is very good at mathematics can figure out the progres-
> [fol. 1757] sion when you get nine numbers in various combinations as to the tremendous variety of stitches you get, but it is enormous."

Is that true?

A. That is true.

Q. And there again you were referring, were you not, to the fact that your 401 machine has two followers which independently engage different cams?

A. Yes.

Q. At the same time?

A. Correct.

Q. Did you notice, sir, in referring to the built-in cams in that testimony that you did not say "so-called built-in cam machine"?

A. I was talking about——

Q. You did not state that, did you? You did not use the word "so-called" as you did in your direct testimony only a few minutes ago? You did not use the expression "so-called," did you?

A. I did not describe the machine that way.

Q. You used the expression—well——

A. Read the whole sentence, please.

Q. "The chief difference would be that with the built-in cams in the 401 Slant-O-Matic"——

[fol. 1758] A. I did not describe it as a built-in cam machine. I said "with the built-in cams in the 401"—describing one of the features of the 401.

Q. I see. So when you described the machine you say "so-called built-in cam," but when you describe the feature you merely say "built-in cams"—is that the sum and substance of it?

A. I think that the reason, I should explain——

Q. No, wait. Is that the sum and substance of it?

Mr. Klots: I think he may answer it.

The Court: Let him finish his answer. If you do not like it you may move to strike it out.

A. I think if you describe a machine by identifying it by one feature you are limiting your description in a way that doesn't tell what the other desirable features of that machine may be.

If you are talking about a specific machine and say "one of the features is built-in multi-cams," this to me is perfectly accurate. It makes no reference to all the other features.

Q. In further testifying as to the Singer 401 machine in relation to a replaceable cam machine, you stated——

Mr. Klots: Page, please. May we have the page?

[fol. 1759] Mr. Elkins: 299.

Q. You stated, referring to the 403:

> "She can get a wide variety of stitches if you mean that if there are 15 cams available she can get 15 stitches, but if we go back to commutations, like the probability of getting 13 spades in a bridge hand, there are enormous possibilities in the combining of the pluralities."

There, sir, you are again referring to the feature of the 401 machine which embodies two followers which simultaneously engage different cams?

A. Yes, sir.

Q. Now in relation to this feature of the 401 machine and the two followers as we have just described it, you intended,

did you not, with this testimony to give the commissioners of the Tariff Commission a true impression?

A. Of course.

Q. Now, Defendant's Exhibit 107, which is the Gegauf 1 mechanism (handing), does not have that feature, does it, sir?

A. No.

Q. That is, the ability of using two followers to engage [fol. 1760] different cams?

A. No, it does not.

Q. Wouldn't you say, Mr. Bruder, that a built-in cam machine was more competitive to the Singer 401 than a replaceable cam machine?

A. You would have to tell me about all of the other features on the machine. Does it have cam control feed? Does it have a built-in buttonholer? Does it have a pattern elongation device?

Your description is too incomplete for me to be able to make a fair——

Q. You just cannot say from the description as I have given it to you?

A. That's right.

Q. You just cannot say?

A. That's right.

Q. Didn't you represent to the United States Tariff Commission that the importation of built-in cam machines, which had this Gegauf 1 type of mechanism, would hurt the Singer sales of the Singer 401 machine?

A. Will you rephrase the question?

Q. Do you want the reporter to read it?

A. Would you please?

(Question read.)

[fol. 1761] A. Yes, I did. I don't remember the exact testimony.

Q. That was the substance of your representation to them?

A. Yes.

Q. At the time you testified before the United States Tariff Commission, there were replaceable cams available, were there not?

A. Yes, sir.

Q. And yet your representation to the Tariff Commission, as you have just described it, was made even though these replaceable cams were available?

A. Read the question again, please.

(Question read.)

Mr. Klots: I object to the question as argumentative.

The Court: Yes, it is. Objection sustained.

Q. Sir, I believe you testified that a great deal of training material was sent from Singer headquarters to the various sewing centers, Singer sewing centers.

A. That's correct.

Q. Did you select the two pieces of that training material that were put into evidence—I believe as Defendant's Exhibits 168 and 169 (handing)?

[fol. 1762] Mr. Klots: May I ask what you mean by "select"? Did he select for what purpose or when and where?

Q. Did you select those two pieces of material for the purposes of this trial?

A. No, I did not.

Q. You did not. Directing your attention to Defendant's Exhibit 168, which is a bit of a chart, that is part of a book, is it not, that is sent to the Singer sewing centers?

A. To the best of my recollection this piece was sent out, as I think I testified, late '57 or '58. This piece was included as an insert in a shop meeting guide, similar to this shop meeting guide (indicating).

That is just my recollection of it, sir.

Q. You did not select them for submission?

A. No, sir.

Q. In relation to this trial?

A. We turned over advertising, sales promotion and a lot of materials, of course, but I did not select that.

Q. Is this training material which is sent out by your office under your control? Do you supervise it in any way?

A. Yes. The Director of Sales Promotion reports to [fols. 1763-1768] me, yes.

[fol. 1769] Cross-examination (Continued)

By Mr. Elkins

Q. Before the introduction of the 401 machine, you or your staff were required to conduct a market survey, were you not, in relation to its potential sale?

A. In the—how do you use—what is your definition of "market survey"?

Q. Let me ask you whether you were required to conduct some kind of market analysis, a market projection in relation to the prospective sales of the 401 machine?

The Court: Did you make an inquiry about possible customer acceptance of the projected Model 401?

The Witness: In that sense, your Honor, no, we did not make a customer survey. That is why I raised the question about it in the sense that market surveys are sometimes made with a description of a product and then trying this on the consumer to see how it would make out—no. We made sales projections, yes.

[fol. 1770] Q. You made sales projections?

A. That is right.

Q. On the 401 machine?

A. That is right.

Q. When did you do that?

A. I can't remember, sir.

Q. Was it before the introduction of the 401 machine?

A. Oh, yes.

Q. So it was prior to June, 1957?

A. Yes.

Q. What information did you rely upon in arriving at sales projections of the Singer 401 machine?

A. Our past sales history, the estimated total market for sewing machines and what that total market would be.

Well, actually it was based on all of our general experience with household sewing machines.

Q. Including also, as I understand your testimony, the estimated total market of household sewing machines?

A. That is right.

Q. Did you arrive at a figure as to that estimated market?

A. Yes, I believe that we did, yes.

Q. What sewing machines were Singer selling at the [fol. 1771] time?

Mr. Klots: At what time, please?

Mr. Elkins: At the time of the market survey or the sales projection.

Q. It was selling a straight stitch machine, was it not?

A. Oh, we were selling a number of straight stitch machines, and I believe that at the time we were working on these forecasts we were also selling the 306 and the 206.

Q. The 306 is a replaceable cam machine; true?

A. A machine with a replaceable cam feature, yes.

[fol. 1772] Q. And the 206 is a manually operated zigzag machine; right?

A. A machine that has a built-in cam or actuating device for automatically swinging the needle bar, but no means of replacing the device which is built into the machine to produce a variety of ornamental stitches.

Q. And didn't the 206 produce some different stitching by the use of a manual device?

A. There were levers to be manipulated manually which would vary the fundamental zigzag pattern, yes.

Q. Were you able to arrive at estimated sales figures of the Singer 401 machine?

A. Yes, we did.

Q. And as to the first six months that it was on the market, were those figures accurate?

A. Yes, they were, quite accurate, from memory.

Q. Of the total sewing machine market, how were you able, sir, to estimate what part of that would go to the 401 machine, having in mind that at the same time you were selling a replaceable cam machine and a manually operated zigzag machine?

A. We base our estimates, as I have said, on past history, [fol. 1773] including the sales history on our top of the line machines.

Q. Did that past history that you referred to include the sales of the 319 machine?

A. From memory, the projection was made before we had that information.

Q. As I understand it, you say that no contact with potential consumers was made in relation to this analysis.

A. That is right.

Q. Did you conduct any survey of your retail outlets?

A. Not in a formalized way. As I think I have mentioned earlier, we are constantly in communication through normal channels.

Q. So that there was nothing special in relation to this sales analysis.

A. No, sir.

Q. Or sales forecast. At the time of this survey the Brother built-in cam machine was on the market, was it?

A. I don't know. I don't remember.

Q. Would it aid your recollection, sir, if you were to be told that it is agreed between the parties to this action that [fol. 1774] the Brother built-in cam machine arrived in the United States in September, 1954, as set forth in paragraph 22 of the agreed statement? Does that help your recollection at all?

A. Yes. I would say that we were making this study, analyzing these possibilities, in late '54 or early '55.

Q. Did this analysis take into consideration the fact that the 401 has a built-in or would have a built-in cam mechanism or built-in cams?

A. It took into consideration all of the features that would, in our opinion, make this brand new sewing machine attractive, including the built-in cams.

The Court: Did you reduce all of this checkup that you made to a written report?

Is there such a report in evidence?

Mr. Elkins: No, your Honor.

The Witness: To the best of my knowledge, it was never reduced into a formalized report. We had a great many discussions on it, naturally, so the factories could make their tooling and capacity plans, but I don't recall that it was ever reduced to a formalized kind of a report.

By Mr. Elkins:

[fol. 1775] Q. There were writings in relation to it, were there?

A. Yes, notes, but so much of our work of this kind is done in discussion groups by the staff.

Q. And at such times, are you saying that there would

be no one present to take notes, reduce the meeting to writing?

A. We do not have a secretary that takes notes and then puts out a summary afterwards, at many of these meetings, no.

Q. Were there any writings, memoranda, letters, intra-company letters from you to somebody else or vice versa in relation to the sales projection?

A. Not that I recall. I don't recall any.

Q. If there were or had been such writings, where would they now be located?

A. Well, they might be in one of a number of files that had to do with the testing of the 282, which was the experimental machine number for the 401. I would just have to start and hunt.

The Court: We don't want to begin a discovery proceeding at this stage of the trial, do we, Mr. Elkins?

Mr. Elkins: It wouldn't be at this stage of the trial.

[fol. 1776] The Court: I imagine, if these things were in existence, that the government would have found out about them long ago. You have had access to all of Singer's files.

. . . . . .

[fol. 1777] Q. Sir, are you saying now that there was no final report setting forth the results of your sales projection on the 401?

A. To the best of my knowledge there was never such a final written report—to the best of my recollection.

Q. And in the absence of such a final report how would you communicate to the various officials of Singer the results of your sales projection?

A. In discussions with the vice president of manufacturing, the vice president of research and development, and the president of the company.

Q. And you would transfer your intelligence to each of them orally, is that the idea?

A. Yes, or in a group meeting.

Q. Would you say, sir, that the sales of competitive replaceable cam machines in the United States would have the same effect as Singer sales of its 401 as to the sales of competitive built-in cam machines?

A. Would you—this is a comparative question.
Would you mind reading it again, please?

(Question read.)

A. That is such a broad question.

[fol. 1778] The Court: I do not really get the question myself.

Suppose you reframe it. Make it shorter questions and more to the point.

Q. Would you say that if built-in cams were excluded from the United States market, that that would not increase Singer sales of its 401, if imported removable cam machines were available?

Mr. Klots: I am sorry, I did not get the question, the last part.

(Question read.)

The Court: In other words, do you feel that there is a specific market for the built-in multi-cam zigzag household sewing machine which is not supplied by other machines on the market?

The Witness: No.

Q. In other words, even though Singer succeeded or should succeed—assume that it succeeded in excluding from the United States all built-in cam machines, that would make no difference to the sales of the Singer 401 if replaceable cam machines were available?

Mr. Klots: I object to that.

The Court: That does not follow. I mean——

[fol. 1779] Mr. Elkins: That is the question I want answered, your Honor. I do not know what question the Court has on its mind or what question Mr. Klots has on his mind, but that is the question I would like answered.

Mr. Klots: There is no evidence.

The Court: If a person wants to go out and get a navy blue serge suit, and cannot get a navy blue serge suit, will he buy some other shade of blue serge suit?

Mr. Elkins: I did not intend that to be my question.

The Court: That is about the size of it.

Mr. Klots: Moreover, there is no evidence that Singer

is attempting to exclude all built-in multi-cam machines; only infringing machines.

The Court: Yes, objection sustained the way the question is framed. It is argumentative. Let us get down to the real facts.

Q. Do you, Mr. Bruder, have to submit annual reports?

A. Yes: I submit an annual report to the president, summarizing the activities in our division for the past year.

[fol. 1780] Q. And you save copies of those reports, do you?

A. Yes, I do.

Q. What are they entitled?

A. I think it is simply entitled "Annual Report" of our division.

Q. Mr. Bruder, the Singer 401 machine has built-in cams, does ti not?

A. Yes, it does.

Q. And it can also take in addition to the built-in cams a replaceable cam; is that true?

A. Correct.

Q. When it is so used, that is, as a replaceable cam machine, it is identical, is it not, with the Singer 403 replaceable cam machine?

A. The results are identical when you are using it——

Q. The machine is in all regards identical with the Singer 403 machine?

A. No.

Q. That is the question.

A. No, the machine is not identical.

Q. All right. If the operator wanted to use a replaceable cam only and to change it when she wanted a change in the stitch—do you understand?

[fol. 1781] A. Yes.

Q. Wouldn't it then as so used have all of the features of the Singer 403 replaceable cam machine?

Mr. Kl. s: I object to that. I am not clear what he means by "Would it have all the features". Does he mean would the result be the same or what does he mean? I object to the question as not clear.

The Court: If it is not clear to the witness he may say so. Objection overruled.

A. It is like the last question, the machine would not be the same.

The Court: That is the answer.

Q. In what regard would it differ, then, from the Singer 403 machines, assuming, as I say, that the operator was not using the built-in cams of the 401 machine?

A. Well, this machine (indicating) would still have built-in cams.

Q. Yes.

A. And the dual dial means of selecting the cams?

Q. Yes.

A. We are talking about that portion of the machine only.

[fol. 1782] Q. All right. Now I am assuming that we have an operator that does not want to use that mechanism or is not using that mechanism as you have just described it but who instead is using the replaceable cam in the 401 machine, and that can be done, can it not?

A. Yes, you can put a replaceable cam in there and draw information from——

The Court: Mr. Elkins, your question—I do not like to say it but it isn't entirely fair. The fact that the operator wants to use only the replaceable cam does not affect the machine itself.

The Witness: That is what I am trying to say.

The Court: The machine itself is essentially different.

Mr. Elkins: Yes.

The Court: The 401 has the built-in cams and has other features——

Mr. Elkins: Yes.

The Court: —that are not possessed by the 403.

Mr. Elkins: Yes.

The Court: I do not think you intend—I know you do not intend to be unfair in framing these questions but the [fol. 1783] effect is not desirable.

Next question.

Mr. Elkins: I think it is. If your Honor please, I want to ask——

The Court: This is not proper cross-examination.

Mr. Elkins: I want to ask whether or not the Singer 401 machine could not be used if the operator so elected as a replaceable cam machine. I think it is pretty simple, your Honor.

The Court: I know but that is not what you have been asking up to this point.

Mr. Elkins: I ask it now, if you Honor please.

The Court: Go ahead, that is all right. That he can answer.

A. The machine can be used—the 401 machine can be used to take intelligence from one cam in a fashion similar to the way we do it on the 403.

Q. And when the operator wanted a change in the pattern, why the operator would put another replaceable cam in the 401 machine?

A. That is right. That is one way of doing it.

The Court: And if you had that same replaceable cam [fol. 1784] in the 403, the net product would be the same?

The Witness: Yes, sir.

The Court: There has never been any dispute about that?

Mr. Elkins: No, your Honor.

Q. Now you participated, Mr. Bruder, did you not, in the Singer license—in the negotiations relating to the Singer license to Sears Roebuck on Gegauf 1 and Gegauf 2 patents?

A. Yes, sir.

Q. At the time of that transaction Sears Roebuck was a customer of some subsidiary of Singer; is that so?

A. Yes.

Q. What was that subsidiary?

A. Diehl Manufacturing Company, the electrical division of the Singer Manufacturing Company.

Q. Is it true that Singer would not have licensed Sears Roebuck had it not been for that business relationship?

A. That is true.

Q. Now, sir, in your testimony, if I may direct your attention to page 1609 of the record (indicating), wherein you stated: "in the 404 the zigzag attachment which [fol. 1785] actuates the needle is the means of producing the zigzag stitch".

A. That should read "cloth" or "work". In the 404 the zigzag attachment which actuates the work or cloth, rather than the needle. If I said "needle" it was a slip of the tongue.

Q. Now you have amended it to make it correct, is that so?

A. Yes.

Q. These zigzag attachments to the machine work not the needle but the work material, is that it?

A. Right.

Q. Is such a mechanism that vibrates the work material less easier for the operator to use than a mechanism that vibrates the needle itself—less easier?

A. Here you run into an area of opinion.

Q. May we have your opinion, sir?

A. My personal preference, which I would find—which device I would personally find easier to use?

Q. Mr. Bruder, you have given quite a bit of testimony, I think, as to those devices which make operation of the machine easier. Having in mind the same context now that you had in mind when you gave that testimony, I would now like to ask you whether or not it is easier to use a [fol. 1786] zigzag machine in which the needle itself vibrates rather than to use a machine in which the work material is vibrating back and forth?

A. My own personal opinion and preference is that I would prefer the vibrating needle for doing zigzag work than a zigzag attachment.

Q. With the vibrating needle the work material goes through the machine straight, does it not?

A. Yes.

Q. And with the other system, that is, the attachment, the work material is going back and forth?

A. Correct.

Q. Now are you generally acquainted with machines of competitors, Mr. Bruder?

A. Generally, yes.

Q. Are you acquainted with the Borletti machine, which is Defendant's Exhibit 114?

(Mr. Weinstein hands exhibit to the witness.)

A. I have seen the machine but I wouldn't say that I was acquainted with it or just how it was built or operates.

Q. Do you know whether or not it has a plurality of built-in cams?

A. Well, may I refresh my recollection?

[fol. 1786a] Q. Yes.

A. (After examining) It appears to, but as I say, I am not familiar with the construction of the machine.

[fol. 1787] Q. We are talking about a plurality of cams, sir, rather than a replaceable cam machine.

The Court: He is not familiar with it.

What is Mr. Weinstein's construction? Has it a plurality of cams which are removable?

Mr. Weinstein: It has a single cam inside, your Honor. But, if you want to get anything in excess of one pattern, you have to use a replaceable cam.

Mr. Klots: May I hear what Mr. Weinstein said, your Honor?

The Court: He said it has a built-in cam but that if you want to get a variation of that built-in cam, there is a replaceable cam attachment; you can put in a replaceable cam.

That is what you said, was it not?

Mr. Weinstein: Yes, your Honor. It has two replaceable cams, one for feed control and one for needle control.

Mr. Klots: If your Honor please, this machine is described in the statement of facts, and I don't think Mr. Weinstein's description is entirely accurate.

The Court: Well, what paragraph describes it?

Mr. Klots: I think it is described in paragraph 96, page 50.

[fol. 1788] The Court: This is the Borletti New Home Model 1102.

Mr. Klots: I understand that is the exhibit.

The Court: It "incorporates therein a series of rotary cams mounted about a common axis and a single cam follower with the series of cams and the cam follower being relatively shiftable lengthwise of the common cam axis under spring pressure to a preselected position without withdrawing the cam follower radially of a cam surface."

Mr. Klots: You will note this says a series of rotary cams.

The Court: Yes.

Mr. Elkins: I was asking the witness if they were built-in cams and if he cannot testify as to it, as he indicates——

The Court: He says he is not familiar with the machine,

so why waste time? Not waste time with him but with the machine.

Mr. Elkins: May I have this machine here marked for identification.

The Court: Is this another machine that we have not seen yet?

Mr. Elkins: That's right, your Honor.

[fol. 1789] The Court: What is the name of this machine?

Mr. Elkins: That will be determined in just a moment, if your Honor please.

(Marked Plaintiff's Exhibit 204 for identification.)

The Court: Is it a mystery? I want a description. We are marking it for identification. What is it identified as?

Mr. Elkins: We would like to have the witness identify it, if your Honor please.

The Court: If he can identify it, show it to him.

Q. Could you, Mr. Bruder, identify this machine without a more careful examination than you can make from there?

A. No, I cannot.

Q. Do you know what machine it is?

A. No, I do not.

The Court: Referring to Government's Exhibit 204 for identification.

Q. This machine has a dial on the face of it, has it not?

A. Yes, sir.

Q. And around the dial the various stitches that may be [fol. 1790] obtained by using the dial?

A. I would assume so.

Q. Viewing the machine as you are viewing it, would you be able to determine whether it has one follower or a number of followers?

The Court: Wait a minute. At this point I am not going to go into this machine unless you want to have it in evidence.

Mr. Elkins: It will be in evidence, your Honor.

The Court: It will, if I let it in evidence. What is the description of this article at this point, since the witness cannot give it?

Do you know what make machine this is now?

The Witness: No, your Honor, I do not.

The Court: Have you ever seen it before, to your knowledge?

The Witness: I don't recall having seen it.

The Court: What is the description of this machine now? It is called on the front, "Magic Eye Automatic."

The Witness: That's what it says.

Q. Can you tell, sir, from looking at this machine whether or not it infringes Gegauf 1?

The Court: Please. Will you answer my question, Mr. [fol. 1791] Elkins? What is the name of this machine?

Mr. Elkins: Sanwa.

The Court: Is that a Japanese machine?

Mr. Elkins: It is, your Honor.

The Court: All right. Do you want to offer it in evidence?

Mr. Elkins: Yes, we will offer it in evidence, your Honor.

Mr. Klots: What is the purpose, may I ask?

Mr. Elkins: Well, if I ever am permitted to interrogate the witness——

The Court: Now, Mr. Elkins, I don't like a remark like that. That is discourteous, and I will expect your immediate apology.

Mr. Elkins: I am sorry. I was not referring to you, your Honor. I was referring to—

The Court: I don't like comments of that nature, especially from one of your experience. Don't do it again.

Mr. Elkins: I was addressing my remarks, if your Honor please, to opposing counsel, and the reason for putting it in is as a sample of a Japanese built-in cam machine with the dial on the face of it.

[fol. 1792] Mr. Klots: I think there were 685 that were imported at one time.

The Court: I don't know. Do you object to its admission in evidence?

Mr. Klots: I object to it.

The Court: Objection overruled. It is received in evidence.

(Plaintiff's Exhibit 204 for identification received in evidence.)

The Court: You don't dispute that it is a machine of Japanese manufacture?

Mr. Klots: No, sir.

Q. Sir, you are acquainted with the Gegauf 1 mechanism which is in this defendant's Exhibit 107 that you referred to earlier (indicating)?

A. Yes.

Q. Can you tell me from where you sit whether or not Government's Exhibit 204 has in it a Gegauf mechanism such as the Gegauf 1 mechanism which you have before you?

Mr. Klots: If he is competent. He has not been qualified as an engineer.

The Court: If he cannot tell us, Mr. Klots, he will so say.

A. I cannot.

[fols. 1793-1794] Mr. Elkins: I am very sorry, your Honor, that we could not explain the nature of the machine because it would interfere with the testimony of the witness. I assumed that the witness might know that a Sanwa machine violated Gegauf 2 and not Gegauf 1, and our only purpose——

The Court: Maybe that is so. We might get a concession on it.

Mr. Klots: It is in the stipulation, your Honor.

Mr. Elkins: We have.

The Court: It is in the stipulation? What paragraph?

Mr. Klots: It appears in Exhibit S-23, which is under paragraph 116. Here is a copy of the exhibit.

The Court: Is this machine that we have just taken in evidence, the Sanwa, one of the machines listed in S-23?

Mr. Klots: Yes. That is the machine, and you will see it is the only Japanese machine that violates Gegauf No. 2.

The Court: All right.

* * * * * * *

[fol. 1795] Mr. Klots: With regard to this last machine, may I point out the facts that appear in the stipulation:

None of the Sanwa machines, which is the only Japanese machine that violates Gegauf No. 2, violate No. 1, none

of them reported in 1957, none in 1958, and only 685 were imported in 1959. I just wanted to point that out.

Redirect examination.

By Mr. Klots:

Q. On your cross-examination you were asked about your testimony before the Tariff Commission, the Tariff Commission proceeding.

A. Yes, sir.

Q. I cannot remember exactly how Mr. Elkins worded the question, but you were asked, I believe, why you did not point out the fact that replaceable cam machines competed with the 401 or the Japanese machines that we claimed were infringing the 401.

Mr. Elkins: I object, your Honor. I believe this question [fol. 1796] is predicated upon some question that was never asked. I don't recall it.

The Court: Irrespective of that, he is now going to propound a question to him concerning the testimony that he gave before the Tariff Commission, so we will hear the next question, which is the important question, according to Mr. Klots.

Q. I would ask you whether any machines were involved in that Tariff Commission proceeding except built-in multi-cam machine devices which Singer claimed violated the Gegauf patent.

A. No other machines were involved in those proceedings other than machines with a built-in multi-cam device which violated Gegauf No. 1.

Q. Competition of 403 machines, or any other replaceable cam machines, was not involved in any way, was it?

A. No, sir.

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[fol. 1797] STIPULATION AND COLLOQUY

Mr. Klots: Before we call a witness, your Honor, I would state that the government has now consented to sign the stipulation with regard to catalog advertisements of sewing machines, subject to a clause which Mr. Weinstein has

written out and which we will incorporate in the stipulation itself, and I would like to offer that in evidence now, subject only to the stipulation.

The Court: How will the stipulation read? Why not put it right on the record now?

Mr. Klots: It is stipulated and agreed that the matter set forth in the paragraph annexed hereto and made a part hereof and numbered 150 shall be added to and deemed a part of the statement of facts and subject to the provisions of the stipulation made with respect to such statement of facts dated February 23, 1961:

The plaintiff does not concede the truth of the statements set forth in the exhibits annexed to paragraph 150. The plaintiff does not concede that the collection of catalog pages incorporated in the stipulation, Item 150, in any way represents a complete or statistically significant survey or sampling.

That is the way the stipulation will read, and I offer the [fol. 1797a] exhibit in evidence pursuant to that stipulation.

The Court: The stipulation on the catalog advertisements.

(Received in evidence as Defendant's Exhibit 173.)

[fol. 1798] Mr. Klots: Mr. Newcomb.

George Lee Newcomb, called as a witness in behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Klots:

Q. Where do you live, Mr. Newcomb? What is your home address?

A. 88 Edgewood Avenue, Larchmont, New York.

Q. Are you employed by the Singer Sewing Machine Company?

A. Yes, sir.

Q. In what capacity?

A. I am the advertising manager for the Singer Sewing Machine Company, United States and Canada.

Q. And in your capacity as advertising manager do you have any duty with regard to keeping track of advertising expenses?

A. Yes, I do, sir.

Q. Is it your duty to keep track of the advertising expense made by Singer on its various products?

A. Yes, sir.

Q. And as part of that duty is it your duty to allocate the expense incurred by Singer, the advertising expense among [fol. 1799] the different products and machines?

A. Yes, sir, it is.

Q. For what purposes are these allocations made?

A. These allocations are made to test the effectiveness and to judge the effectiveness of our advertising as it relates to various products in various time periods.

Q. I show you Defendant's Exhibit 163 which I think was admitted subject to further testimony—and your testimony is the "further testimony"—(handing witness), and I ask you if you prepared that exhibit?

A. No, sir, I only prepared that portion of the exhibit that relates to advertising.

Q. But you did prepare the figures on this exhibit that relate to advertising expense, is that right?

A. That is correct, sir.

Q. The sales figures you did not prepare?

A. No, sir.

Q. And from what records did you prepare these figures with relation to advertising?

A. These figures were prepared from the regular company records.

Q. Records which the company keeps; that you use in [fol. 1800] determining the effectiveness of advertising expense with respect to particular products?

A. Yes, sir. These are made from the regular company records with regard to all of our advertising.

Mr. Klots: I offer that now in evidence—I think it is in evidence.

The Court: It is in evidence.

Mr. Klots: Yes.

The Court: This is the record of the advertising expense on the 400 series, is it?

Mr. Klots: It covers not only the 400, sir, but it covers other machines which have appeared on some of these charts.

I have no further questions.

Mr. Elkins: No questions, your Honor.

The Court: Thank you.

(Witness excused.)

The Court: Next witness.

Lawrence M. Dunne, called as a witness in behalf of the defendant, having been first duly sworn, testified as follows:

[fol. 1801] Direct examination.

By Mr. Klots:

Q. Mr. Dunne, will you tell us where you reside?

A. 1316 Lakeshore Drive, Massapequa Park, Long Island.

Q. Are you employed by the Singer Sewing Machine Company?

A. Singer Manufacturing Company.

Q. Employed by the Singer Manufacturing Company?

A. Yes.

Q. And in what capacity?

A. I am a distribution analyst.

Q. What do you mean by that?

A. Well, it is our responsibility to forecast machine requirements of the various factories throughout the world.

Q. Throughout the world?

A. Yes.

Q. But not including the United States?

A. Not including the United States.

Q. And how long have you been in the employ of the Singer Machine Manufacturing Company?

A. Since November 1, 1960.

Q. And prior to that in whose employ were you?

A. The Necchi Sewing Machine Sales Corporation.

[fol. 1802] Q. That is, prior to November 1, 1960?

A. That is right.

Q. And how long prior to that date were you employed?

A. Since October, 1956.

Q. Had you ever been employed by the Singer Company before?

A. Yes, sir.

Q. When was that?

A. From, I believe it was, April 7, 1946, until January 20, 1956.

Q. And then did you leave to go to another job?

A. Yes, sir, I did.

Q. What job was that?

A. I left the employ of the Singer Company to go with the Rayco Auto Seat Company.

Q. And how long were you with that company?

A. A very short period of time, sir—three months.

Q. Then you went to Necchi?

A. Yes, sir, I did.

Q. What was your position with Necchi?

A. I was hired as supervisor of district managers.

Q. And how many dealers did Necchi have at that time [fol. 1803] throughout the United States?

A. Approximately 2,000, sir.

Q. Approximately 2,000?

A. Yes, sir.

Q. And were the district managers in charge of these various dealers—supervise them?

A. Yes, supervise them, yes, sir.

Q. Now I show you this paper here and ask you what it is (handing witness).

Did you ever see one like that before?

A. Yes, sir, I have.

Q. Have you seen an exact duplicate of it before?

A. Yes, sir, I have.

Q. Tell us what it is, if you know.

A. Well——

Q. Just a second—well, no, go ahead.

A. It is a comparison chart, sir.

Q. What was it used for?

A. It was used to compare the features of the Necchi

Supernova Ultra machine with that of the Singer 401 machine.

Q. Used by whom?

A. By the Necchi dealers throughout the country.

[fol. 1804] Mr. Klots: I offer it in evidence (handing to Mr. Elkins).

Mr. Elkins: No objection.

(Marked Defendant's Exhibit 175 in evidence.)

The Court: Is that a publication that was prepared by the Necchi Sewing Machine Company?

The Witness: Yes, sir.

The Court: Hadn't we previously marked it for identification? The number is on the back.

What is the number? It should be on there somewhere.

Mr. Klots: I am sorry.

The Court: Withdraw the other one. That paper has been previously marked.

The Clerk: Someone said Exhibit 167.

The Court: Exhibit 167 is now received in evidence. Mr. Klots has the one that was marked.

Mr. Klots: Yes. I see this has been marked 167 for identification.

The Court: 167 is now received in evidence.

(Marked Defendant's Exhibit 167 in evidence.)

(Previous Exhibit 175 withdrawn.)

Mr. Klots: And this was marked as part of it at the time it was marked for identification, and it shows how [fol. 1805] it came into the possession of Singer. Any objection to that (handing to Elkins)?

Mr. Elkins: No objection.

The Court: Clip them all together.

(Clipped together as part of Exhibit 167.)

By Mr. Klots:

Q. Now I show you this other document, Mr. Dunne, which is very much like the one we just offered in evidence but a little bit different. One of the differences is that

the Necchi machine is shown on the left-hand side and the Singer 401 machine is shown on the right-hand side, and there are some other textual differences.

I ask you what this document is (handing witness)?

A. This is the same thing that I previously identified as being a comparison chart of the two machines.

Q. Used for what purpose?

A. As a sales training aid, I would say.

Q. And was it distributed by Necchi to its dealers?

A. Yes, sir, it was.

Mr. Klots: I offer this copy in evidence—it is a little [fol. 1806] different.

Well, if it is in evidence, we corroborate the testimony.

The Clerk: It was previously marked 146-B.

The Court: All right, it is in evidence.

Mr. Klots: The record will show that the last paper that I had questioned the witness about is Exhibit 146-B in evidence.

I have no further questions.

Mr. Elkins: No questions, your Honor.

The Court: All right, thank you, sir.

(Witness excused.)

The Court: Next witness.

Mr. Klots: Dr. Cohen.

Jerome B. Cohen, called as a witness by the defendant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Klots:

Q. Where do you live, Dr. Cohen?

A. 135 East 74th Street, New York City.

Q. And what is your position?

A. I am professor of economics and assistant dean in [fol. 1807] charge of graduate studies at the Bernard M. Baruch School of Business of the College of the City of New York.

Q. And what is your title in that position?

A. Professor of economics and assistant dean.

Q. Can you tell us about your educational background before coming to the Baruch School of Business, your experience and education?

A. I received my Bachelor of Social Science degree from the College of the City of New York in 1934. I then went on to Columbia University and obtained a Master's degree in economics in 1935, and I obtained a PhD in economics at Columbia in 1947.

Q. And how long have you been teaching at the City University of New York?

A. I have been at City ever since 1934—27 years.

Q. What positions have you held in the faculty there?

A. Well, I have come up through the ranks from tutor to instructor to assistant professor, associate professor, full professor.

Q. Have you ever taught in any other institutions?

A. Yes. Occasionally I have been on leave in the summer and I have taught at the University of Puerto Rico, State [fol. 1808] College of Washington, Southern Methodist University, et cetera. Also I have been at the Merrill Center for Economics at Amherst University.

Q. And have you done work for other organizations besides educational work?

A. Yes. During the early part of World War II I was senior economist in the Office of Price Administration, before I went into the Navy, and I have been a consultant for the American Bankers Association and a number of other organizations.

Q. What about MIT? Have you ever had any connection with them?

A. Yes. I spent one summer at the Center of International Studies at MIT.

Q. By that I mean the Massachusetts Institute of Technology.

A. That is right.

Q. Have you done any writing in the field of economics?

A. Yes, I have written a number of books and some two dozen articles for various journals.

Q. Are you a member of any professional societies?

A. Yes, I am a member of the American Economic Society, the Royal Economic Society, the American Finance

[fol. 1809] Association, the National Tax Association, the Metropolitan Economic Association.

Q. Can you tell us some of the courses that you have taught in the course of your teaching?

A. For 27 years I have taught a good many principles of economics, including analysis and history of economics, in business organization and public policy, money and banking, public finance, corporation finance, money and capital market, et cetera.

Q. In the course of these studies and work as an economist, have you had occasion to study the factors affecting the nature of a market?

A. Yes. The analysis of markets, of the way in which the price mechanisms allocate resources in the market, the extent of competition in a market, the degree of monopolization versus competition in the market—these are central features of economics which one studies in great detail.

Q. In the course of your studies and work as an economist, have you had occasion to study the Japanese economy, the Japanese competition?

A. Yes, I have. In World War II I went into the Navy and became a Japanese interpreter in Naval Intelligence, and my interest in Japan stemmed from that.

[fol. 1810] I have written three books on Japan and a number of articles.

Q. What are the titles of the books you have written on Japan?

A. The first was "Japan's Economy in War and Reconstruction".

The second was Economic Problems of Free Japan, and the third and most recent was Japan's Post-War Economy.

Q. Dr. Cohen, I am going to ask you what is known in law as a hypothetical question.

I am going to ask you to assume, for the purposes of this question only, that the following facts of which there is evidence in the record are true.

Assume that the basic function of a sewing machine is to sew and that a woman purchases a sewing machine in order to sew. Sewing consists of fabricating and maintaining clothing and fabric furnishings for the home. All household sewing machines sew straight stitches. For a limited number of purposes the ability to make zigzag

stitch patterns is desirable. The testimony of experts with wide experience in the use and merchandising of sewing machines indicates that all household sewing ma-
[fol. 1811] chines are capable of sewing zigzag stitch patterns.

There are two types of zigzag stitch patterns, namely functional and ornamental. Functional zigzag stitch patterns are used to sew pieces of material together, to seam, to hem, and to make closures. Ornamental zigzag stitch patterns are one of many kinds of ornamentation used to decorate material. These kinds of ornamentation include buttons, lace, darts, cording, braid, applique, pleats, tucks, ruffling, and shirring. Functional zigzag stitching is useful in affixing such ornamentations to material.

It has been estimated that 90% of a woman's sewing consists of straight stitching. 10% of her sewing consists of zagzag stitching, 5% of which consists of functional zigzag stitching and 5% consists of ornamental zigzag stitching.

Sewing machines with a zigzag attachment may be used to produce various functional and ornamental zigzag stitch patterns which may be changed by the operator by the means provided on the particular attachment. An example of such a sewing machine is the Singer 404, which has a zigzag attachment as standard equipment. It produces zigzag stitch patterns which may be changed by placing a cam into the attachment, which cams may be made and
[fol. 1812] changed without limit.

Sewing machines with a manual device will produce continuous functional and ornamental zigzag stitch patterns upon the setting of controls for controlling stitch width and needle position, and will also produce other functional and ornamental stitch patterns by manual manipulation of such controls. An example of such a sewing machine is the Pfaff 259.

Sewing machines with a replaceable cam device will produce various functional and ornamental zigzag stitch patterns which may be changed by placing a cam or cams into or onto the machine, which cam or cams may be made and changed without limit. Examples of such sewing machines are the Kenmore Model 90, the Elna Plana

Supermatic, the Necchi Supernova Ultra, the Vigorelli Fantasy and the Singer 403.

Sewing machines with a machine-carried multiple-cam device will produce various functional and ornamental zigzag stitch patterns which may be changed by manual manipulation of a dial, handle, knob or lever located on the exterior of the machine. Examples of such sewing machines are the Singer 401 and the Consolidated Sewmor Model 770 (new design).

Sewing machines with a replaceable cam device, sewing [fol. 1813] machines with a manual device and sewing machines with a zigzag attachment are capable of producing zigzag stitch patterns similar to any zigzag stitch patterns that may be produced by a sewing machine with a machine-carried multiple-cam device. Some sewing machines with a replaceable cam device are equipped with features which permit such machines to produce zigzag stitch patterns which the Singer 401 is incapable of producing. One such feature is a cam controlled forward and reverse speed which is found in the Elna Plana Supermatic, the Kenmore 90, the Necchi Supernova Ultra and Vigorelli Fantasy; another such feature is a stitch elongator which is found in the Kenmore 90, the Necchi Supernova Ultra and the Vigorelli Fantasy; a third such feature is the cam controlled lateral feed which is found in the Vigorelli Fantasy.

Sewing machines with a zigzag attachment and sewing machines with replaceable cam and machine-carried multiple-cam devices are capable of producing with comparable effectiveness and reasonable facility substantially the same functional and ornamental zigzag stitch patterns. Sewing machines with a manual device can produce with comparable effectiveness and reasonable facility depending on the skill of the operator substantially the same functional [fol. 1814] and ornamental zigzag stitch pattern that can be produced by the sewing machines with a zigzag attachment and sewing machines with replaceable cam and machine-carried multiple-cam devices.

Sewing machines of different makes an models carry many different and varied features. Manufacturers and merchandisers of sewing machines seek to put before the public a package of pre-selected features for which they

believe the public has expressed a desire, or for which they believe a public desire can be created. Merchandisers select different features and different devices for the purpose of attracting customers and competing with each other.

A housewife is interested in a full concept of the sewing machine. A housewife is most interested in how easy a sewing machine is to use, how well it stitches on a wide range of fabrics and how well it feeds those fabrics without causing her any undue difficulty in handling; in its durability and whether it operates under many different circumstances without mechanical service or even too much care on her part. Ease of threading is extremely important in a sewing machine of any make or type because it must [fol. 1815] be threaded precisely as it was designed to be. If it is not, it will not stitch properly and sometimes it will not stitch at all. Speed control is extremely important for the job of detailing on a garment. A machine must start immediately upon contact with the controller. The speed build-up must be gradual and controllable. Vision is important because in many steps of dress construction, one stitch too far means unevenness either in the lapel of the garment or in the buttonhole or in a pocket. Light weight is highly desirable whether in a portable or in a cabinet sewing machine. Some housewives are interested in sewing machines that make a zigzag stitch effectively and with reasonable facility.

Sales appeal of a sewing machine depends primarily upon three factors; visual attractiveness and appearance, simplicity in mechanical structure and design and effectiveness of sewing operation. A substantial number of sewing machine features are common to straight stitch sewing machines and sewing machines with manual, replaceable cam and machine-carried multiple-cam devices. Some sewing machines emphasize or have features which are not emphasized or are not contained in other sewing machines. Merchandisers in selecting features to emphasize select [fol. 1816] those which will make their machines different from the sewing machines of other merchandisers so that their machines will compete with such other sewing machines. Such package of preselected features is advertised in various media and is emphasized by salesmen in attempting to convince a potential purchaser to purchase a sewing

machine. Singer merchandises its sewing machines in accordance with the principle that a sewing machine is a package of preselected features which must be consistent with production of excellent straight stitches. Singer instructs its salesmen to emphasize the particular package of features which the salesman believes will appeal most to the prospective customer with whom he is dealing at the time.

Singer, in considering the features to be incorporated in the 403 and 404 sewing machines, decided that the fundamental features of the 401, namely, the slant needle construction, the loop taking mechanism, the fixed bobbin case, the drop-in bobbin, gear motor drive, and a die cast aluminum head would be utilized in the construction of the 403 and 404 sewing machines. It was decided that the machine-carried multiple-cam device and the two dials on the exterior of such machine to actuate such cam device was [fol. 1817] not a fundamental root of the 401 machine. Such dials were considered to be a feature to be advertised and promoted as one of the selling points of the 401 machine.

Most manufacturers make straight stitch sewing machines which will take a zigzag attachment and sewing machines which, in addition, have other zigzag devices. Some manufacturers make sewing machines with multiple-cam devices, replaceable cam devices and manual devices. Some manufacturers make sewing machines with machine-carried multiple-cam devices and replaceable cam devices. Some manufacturers make sewing machines with replaceable cam devices and manual devices. Some manufacturers make sewing machines with machine-carried multiple-cam devices and manual devices.

Wholesale distributors distribute straight stitch sewing machines which will take a zigzag attachment and sewing machines with a variety of other devices for making zigzag patterns.

Most retailers offer straight stitch sewing machines which will take a zigzag attachment and sewing machines which, in addition, have other zigzag devices. Some retailers offer sewing machines having a machine-carried multiple-cam device, a replaceable cam device, a manual [fol. 1818] device and a zigzag attachment. Some promi-

nent retailers do not offer sewing machines with a machine-carried multiple-cam device. Retailers do not physically segregate for purposes of sale straight stitch sewing machines which will take a zigzag attachment from sewing machines which, in addition, have other zigzag devices. Retailers do not physically segregate for purposes of sale sewing machines with a manual device, replaceable cam device and machine-carried multiple-cam device from each other.

Sewing machines with zigzag attachment, manual device, replaceable cam device, and machine-carried multiple-cam device are advertised in the same media, namely, newspapers, women's magazines, consumer periodicals, trade journals, radio and television. Sewing machines with a zigzag attachment, a manual device, a replaceable cam device and a machine-carried multiple cam device are advertised in many instances on the same advertising mat.

Few, if any, potential customers prior to the salesman's demonstration know the difference between sewing machines with a manual device, a replaceable cam device and a machine-carried multiple-cam device or are familiar with all of the features of a manufacturer's sewing machine. [fol. 1819] Customers consider sewing in terms of the kinds of stitches which can be produced rather than in terms of the means by which stitches are produced. In general customers do not come in and ask to purchase a sewing machine with a particular feature, but express an interest in sewing, seek the advice of a retailer for a specific sewing problem or wish to purchase a used or new sewing machine. In Singer shops, the testimony of experts with wide experience in the use and merchandising of Singer sewing machines indicates that customers do not ask specifically for a sewing machine with a machine-carried multiple-cam device. Salesmen generally attempt to interest the customer in a specific sewing machine, the choice depending upon a number of factors. Salesmen lay emphasis upon a group of features. Some such features, such as easy access to the bobbin; dependable stitch tension; good visibility of the sewing area; easily adjustable presser foot to accommodate different weights of material; dependable feeding of the sewing material; automatic bobbin winder;

speed control; and light weight, are more important to a customer than are other features.

Most customers who express interest in sewing machines which can produce zigzag stitch patterns do not demand a [fol. 1820] sewing machine which can produce a great number of zigzag stitch patterns.

It has been testified that Singer has a reputation for reliability, quality and service. A customer's selection of a sewing machine depends upon numerous factors, including, among others, the reputation of the manufacturer or seller of the sewing machine, quality of sewing machine, price, availability of financing arrangements and type and term thereof, availability of service, availability of parts, furnishing of lessons or instructions as to the use of the sewing machine, sewing machine features and appurtenances and attachments accompanying or available for use with the sewing machine, type and effective time of guarantee, location and type of shop at which sewing machine is sold, and the customer's psychological approach as reflected in such things as a desire for a sewing machine of a particular quality, that is to say, minimum workable, average or best available, susceptability to persuasion by salesmanship, reaction to the country of origin of a sewing machine and responsiveness to various promotion and advertising techniques.

There is available to a prospective purchaser of a sewing [fol. 1821] machine a wide range of model choices and price choices which is evidenced by the seven price charts which I now hand you.

Mr. Klots: I am handing the witness, attached to the stipulation, paragraphs 141 et seq. (handing).

Q. (Continuing) If, for example, a prospective purchaser wants to buy—excuse me.

I also call your attention that in addition to those price charts, that the testimony shows that only recently a Necchi straight stitch or plain stitch machine, Supernova was priced at $136.95; at another place it was priced at $169.50, and at another place a Pfaff straight stitch machine which was regularly sold for $169.50, after making a $40 allowance, was offered at $129.50.

There is another Pfaff machine which was offered at $149.50.

At another place a Necchi Supernova straight stitch machine was offered for $229.

There is another machine which was sold under the Winthrop name, which apparently was made in Japan, a straight stitch machine, and the list price of which was $249, but it was finally offered at $189.

[fol. 1822]. Sears Roebuck in Hackensack offered a straight stitch model, No. 76, for $126.95 with Greist decorator attachment, which they also advertised through the catalog and sold.

Having in mind those charts and that testimony, I continue with these facts:

If, for example, a prospective purchaser wants to buy a sewing machine with a well known name and a reputation for top quality, reliability and service and is willing to pay accordingly he could buy a sewing machine with a machine-carried multiple-cam device or a replaceable cam device or a manual device or a zigzag attachment. If, on the other hand, he only wants to spend $100 or less on a sewing machine, he could equally well buy a sewing machine with a machine-carried multiple-cam device or a replaceable cam device or a manual device or a zigzag attachment.

Prices of sewing machines are a function of numerous factors, including, among others, the reputation of the manufacturer, quality of sewing machine, sewing machine features, appurtenances and attachments accompanying the sewing machine, availability of service, availability of parts, type and extent of financing arrangements made available, furnishing of lessons or instructions as to the use of the sewing machine, type and effective time of guarantee, cost of manufacture, cost of distribution, loca-[fol. 1823] tion and type of shop at which sewing machine is sold and promotion and advertising expenditures.

A substantial portion of sales of sewing machines is financed through the medium of conditional sales contracts by virtually all retailers of sewing machines which narrows the difference in monthly payments regardless of the prices of machines.

I now hand you a chart showing comparative sales of the Singer 401 and 319 sewing machines which both have

machine-carried multiple-cam devices in one column or bar, the Singer 403 and 306 sewing machines which both have replaceable cam devices in another bar, and the Singer 404 and 301 sewing machines for both of which a zigzag attachment is available, over the course of the years 1958 to 1960. I mean to say that chart shows the sales for those machines over those years.

[fol. 1824] This chart shows that sales of the three models of sewing machines each year have approached greater equality in percentage of total sales. In 1958 sales of Singer sewing machines with machine-carried multiple-cam devices constituted 57.6 per cent of total sales of the three sewing machines; in 1959 44.8 per cent of such sales and by 1960 41.4 per cent of such sales.

In the same three years the sales of the sewing machines with replaceable cam devices rose from 3.8 per cent of such sales in 1958 to 18.6 per cent in 1959 and 26.8 per cent in 1960. During the three-year period the absolute sales of the Singer sewing machines with machine-carried multiple-cam devices remained within a constant range of 152,000 to 156,000, whereas sales of the sewing machines with replaceable cam devices rose from 10,000 sewing machines in 1958 to 64,000 in 1959 and approximately 100,000 in 1960.

Singer Manufacturing Company presently manufactures straight stitch sewing machines which will take a zigzag attachment and sewing machines with replaceable cam and machine-carried multiple-cam devices in the United States and distributes them nationwide through a wholly-owned subsidiary, Singer Sewing Machine Company, which oper-
[fol. 1825] ates some 1,600 retail stores throughout the United States. The principal portion of Singer's sales in the United States are through such retail stores. In addition, leased outlets are operated by Singer in approximately 80 department stores located in key cities. All models of Singer household sewing machines are offered in each such retail store and outlet. It also sells at wholesale to approximately 270 independent retail stores. Singer also sells household sewing machines in virtually all foreign countries outside the Iron Curtain through its own and independent distributors who operate thousands of retail stores in such countries. Singer owns and operates plants

manufacturing sewing machines in some 14 foreign countries.

Directly after World War II household straight stitch sewing machines were manufactured in the United States by White Sewing Machine Corporation, Free Sewing Machine Company, Inc., the Bell Manufacturing Corporation, Burtman Electric Company, Gellman Manufacturing Company, Inc. and the New Process Gear Company as well as Singer. In the year 1948 importations of household sewing machines from Japan amounted to 3,000 sewing machines. In the year 1959 importations of household sewing machines from Japan amounted to 1,100,000. By 1959, with [fol. 1826] the exception of the New Process Gear Company, which manufactures sewing machines on specifications and orders from a single customer, Singer was and now is the sole manufacturer of household sewing machines in the United States.

White Sewing Machine Company which discontinued its manufacturing operations in 1957 in the United States, stated that both White and Sears, Roebuck and Company had been fighting a side by side but losing battle over the past five or six years in trying to sell White's lines of fine USA-made sewing machines in competition with foreign-built imports. When Sears left White's side to pursue the import route, it was obvious that White had no chance of supporting its sewing machine manufacturing facilities on a volume suddenly reduced nearly in half. In this situation, management decided to have its line of sewing machines built for it in Japan and Germany, and to dispose of its principal sewing machine manufacturing facilities. This decision was based upon the conviction that it offered the most logical and quickest route to profitable operations and increased sales in the sewing machine division.

The recent trend is that Japanese manufacturers are either setting up sales subsidiaries in the United States or [fol. 1827] are purchasing controlling interests in the former domestic manufacturers of sewing machines.

Singer survived for the following reasons: Singer stands for quality, reliability and service. Its wholly-owned outlets throughout the country provide consumers with services that no retailer of Japanese sewing machines can duplicate. The same thing is true with respect to guaran-

tees, after-purchase services, sewing courses and the general quality of the products sold by Singer.

By 1959 Japanese manufacturers and exporters operating as a cartel and their importers had obtained more than 60 per cent of the sewing machine market in the United States. The 1,246,898 Japanese exports approved by the Japanese Government in 1959 consisted of 567,389 straight stitch sewing machines, 264,271 sewing machines with replaceable cam and machine-carried multiple-cam devices, and 375,111 sewing machines with a manual device and 40,127 sewing machines with unknown zigzag devices, or more than 60 per cent of the sewing machine market in the United States in the year 1959. In addition to such Japanese sewing machines, thousands of competitive sewing machines were imported from Europe. While the Japanese Government does not distinguish in its figures [fol. 1828] between sewing machines with machine-carried multiple-cam and replaceable cam devices, the record shows that in 1957 Japanese-made sewing machines with a machine-carried multiple-cam device represented 13 per cent of imports of sewing machines with machine-carried multiple-cam, replaceable cam and manual devices from Japan and only slightly more than 3 per cent of all imports of household sewing machines from Japan. In the year 1958 the number of Japanese-made sewing machines with a machine-carried multiple-cam device imported into the United States amounted to approximately 12 per cent of sewing machines with machine-carried multiple-cam, replaceable cam and manual devices so imported and amounted to approximately 4 per cent of all imports of household sewing machines from Japan. In the year 1959 the number of Japanese-made sewing machines with a machine-carried multiple-cam device imported into the United States amounted to approximately 10 per cent of sewing machines with machine-carried multiple-cam, replaceable cam and manual devices so imported and approximately 4 per cent of all imports of household sewing machines from Japan.

I show you a summary of Japanese sewing machines imported into the United States. I think counsel has it, [fol. 1829] and we won't have to read it into the record.

The Japanese were free to manufacture and sell sewing

machines with machine-carried multiple-cam devices which did not infringe any Singer patents relating to such devices at all times and in 1959 these sewing machines amounted to almost one-third of all Japanese sewing machines with machine-carried multiple-cam devices imported into the United States, were of various non-infringing constructions and were produced by a considerable number of manufacturers.

I call your attention to the fact that I have handed you seven price charts, one chart representing actual prices paid by Singer for sewing machines with manual, replaceable cam and machine-carried multiple-cam devices and prices transmitted to Singer by plaintiff; three charts representing prices at which Japanese-made sewing machines with respectively, manual, replaceable cam and machine-carried multiple-cam devices are listed for sale and offered for sale by dealers in the United States; and three charts representing prices at which European-made sewing machines with respectively, manual, replaceable cam and machine-carried multiple-cam devices are listed for sale and offered for sale by dealers in the United States. And you have heard testimony with regard to the prices at [fol. 1830] which certain straight stitch machines were offered recently in this country, testified to this morning by a witness.

Now, on the basis of the facts which I have stated and the charts which I have handed to you and on the basis of your expert knowledge of economics, have you been able to form an opinion as to whether sewing machines with machine-carried multiple-cam devices, replaceable cam devices and manual devices for making zigzag stitches and straight stitch machines with zigzag attachments compete with each other in the same market?

A. Yes, I have.

Mr. Elkins: Objection, your Honor.

The Court: Objection overruled. I am going to take it. It is really the ultimate question that I may have to determine, but I will take it for such guidance as it may give me.

Mr. Elkins: May we point out, your Honor, that question contains as a hypothesis material on which there has been no testimony.

The Court: Well, I suppose that is so, but I am going to disregard some of it. This subject of hypothetical questions is something I can never understand and never accept, although I had to for many years as a prosecutor [fol. 1831] on questions of sanity. I could never see it. The objection is overruled. I am going to take it. But frankly, with due respect to the professor, I don't think I am going to give it very much weight, if any.

Mr. Klots: I understand that is your Honor's attitude but I think it will be very helpful to your Honor. We are not asking him to decide the case, obviously, but we do think the opinion of an economist who has studied the market, studied matters of competition is of some help in pointing out some of the——

The Court: Well, some judges have called in patent experts to sit with them and others have called in economists in the relevant market. I don't exactly approve of it. I am going to take it so that it can be in the record.

Mr. Klots: And I also wanted to deny on the record that we have put into this question any facts that are not in evidence.

The Court: I suppose there may be, but not deliberately done.

Mr. Klots: Certainly not deliberate, nor do I think there are some.

The Court: All right. Objection overruled. I will take it. And you have an exception.

[fol. 1832] And your answer, Professor, is what?

The Witness: Yes.

The Court: In the affirmative. Had it been "No," you would have surprised Mr. Klots.

Mr. Klots: Your Honor, I am told that there is one item here, one of those percentages we got from the United States Department of Commerce. This is a certified copy which we received from the U. S. Department of Commerce, Bureau of the Census, showing the United States imports of sewing machines for consumption in the calendar years 1948 through 1959.

The Court: Well, Mr. Elkins, what do you say? Any objection?

Mr. Elkins: If your Honor please, this chart, upon examination of this set of figures, contains figures for industrial

sewing machines which are grouped together with household sewing machines. Consequently, it is obviously quite beyond the scope of any issue that is presented here. It shows figures for 1948 right down through and including 1959 and specifically states that included within each particular figure are imports of industrial type sewing machines and that they are reported or combined with the household sewing machines as one total.

[fol. 1833] The Court: They are not separately stated?

Mr. Elkins: No, your Honor.

Mr. Klots: The fact is, your Honor, that the number of industrial sewing machines, as Mr. Fairman stated, is a very small proportion, and we have a certified copy of the 1960 census report which shows exactly what percentage were industrial.

In 1959, which I am offering now, it does not show the exact number.

The Court: Well, we will take it in evidence, bearing in mind that it has the combined total of industrial and household sewing machines.

Objection overruled.

(Received in evidence as Defendant's Exhibit 174.)

Q. Dr. Cohen, I think your answer was that you are able to give an opinion as to whether these different types of machines compete with each other in a single market. What is your opinion?

A. Yes, I believe they do compete with each other in a single market.

Q. Will you please give your reasons for your answer.

A. I think it is unrealistic, for the purpose of defining a [fol. 1834] market, to classify a sewing machine by the type of mechanism or the type of control that is used to make a zigzag stitch. From an economist's point of view in studying markets, I feel the more meaningful approach would be to look at the sewing machine as a whole from the standpoint of its function and use. It is obvious that there are a number of designs of machines that will sew and that will sew zigzag stitches.

It would seem to me to be an unreasonable approach to fix on one type of mechanism or control out of several by

which the same result may be accomplished and to say that that mechanism or that control is the determining factor in deciding whether the machines are or are not in the same market. Products which are reasonably adaptable to the same uses may be referred to as functionally interchangeable because it is the product with all its uses which is or is not in competition.

The decision as to the functional interchangeability should be made with reference to all the functions of the product rather than to some sub-use or sub-mechanical feature.

I think the hypothetical question shows that there are numerous features which go into the choice that a customer makes of a sewing machine other than the mechanism [fol. 1835] by which the zigzag stitch is made. For instance, the slant needle feature or the convenience of replacing the bobbin may perhaps be of more concern than whether the change in the zigzag pattern is accomplished by the turning of a dial or by the replacing of a cam.

Q. You referred to competing in the same market. How do you define the term "market" in that sense?

A. Well, of course, it is very difficult to define a market. There are certain tests that I would apply: Do the products compete for the same buyer's favor? Are the products available in the same product market to the buyer? Do the products have reasonably similar uses? Are the products reasonably interchangeable and acceptable for the same purpose?

If products compete for the buyer's favor, if they are available to the buyer in the same product market, if they have reasonably similar uses, if they are reasonably interchangeable and acceptable for the same purpose, an economist, I would think, would say they are in the same market.

Thus we might define a market by saying that it is the area or the institutional framework within which buyer meets seller or buyers meet sellers of reasonably similar [fol. 1836] products, having reasonably similar uses, reasonably interchangeable and acceptable for the same purpose to satisfy their demand.

Q. Have you found any authorities to support this conception of market?

A. Yes, I have.

Q. Will you give us some of those.

A. In a book by G. E. Hale and R. D. Hale entitled "Market Power, Size and Shape Under the Sherman Act," the authors declare, and I quote:——

Q. And were both of those authors lawyers or is one an economist?

A. One is an economist.

"Economic theory is equally devastating in its analysis of the legal principles applied in most of the definitions of commodity cases referred to above. The raw materials used and methods of manufacture utilized in the making of a product bear no logical relationship to the question of substitutability. A buyer is interested in what the product will do for him; he does not care—except in terms of performance—whether his sound recorder utilizes a wire or a tape, whether his hosiery be made of silk or nylon. Still less relevant [fol. 1837] is the notion that price in terms of dollars alone controls substitutability. One who desires a needle for his phonograph may be offered a sapphire product at $5 or a diamond needle at $15. If the diamond wears four times as long, the fact that the price ratio is three-to-one should not prevent the product from being defined as the same commodity for purposes of determining the existence of monopoly. Much competition takes place at varying or uniform prices and is reflected in quality, service and other factors.

"Again, it is erroneous to apply pure engineering principles to determine whether one product can actually be substituted for another. An engineer might determine that an aluminum frying pan was substitutable for one made of stainless steel. Such a test would be considerably better than one based purely upon the distinction between raw materials utilized in the manufacture of the products. It would, however, ignore the fact that consumers often make decisions upon grounds which others regard as irrational. Thus to apply pure [fol. 1838] engineering principles to the problem constitutes a rejection of the basic doctrine of consumer sovereignty."

In another book, "Antitrust and Perspective" by a Columbia professor, in a discussion of the relevant market, it is said:

"First, primary importance is assigned to end use. In the words of the Court: "in determining the market under the Sherman Act, it is the use or uses to which the commodity is put that control.

"Second, where articles have the same end use and are thus interchangeable, it is not necessary that they be equal in their functional performance. On the contrary, they may differ in appearance, quality, taste and efficiency. The requirement is not one of complete but rather of reasonable interchangeability. The Court refuses either an infinite or a rigidly narrow "range" in the consideration of alternative products. The issue is whether in fact there is reasonable interchangeability of end use.

"Third, the court negates the necessity for any physical identity or fungibility among the products making up the relevant market.

"Fourth, there may be interproduct competition despite [fol. 1839] substantial differences in price.

"In sum, to the extent that there is reasonable interchangeability in the market place, there is that degree of competition which warrants the inclusion of all competing articles within the market."

In a report of the Attorney General's National Committee to Study the Antitrust Laws, on which a number of distinguished economists were represented, it was said, and I quote:

"Whether monopoly power for purposes of Section 2 exists"——

The Court: Mr. Klots, I want to be very patient with this professor, coming, as he does, from a school that I am very much personally indebted to, but I think we are getting a little far afield now.

Mr. Klots: Well, we won't ask him to cite any more authorities, but I have one or two further questions I would like to ask him.

The Court: All right.

Q. What would you have to say, Dr. Cohen, as to the relation of varying prices to the concept of market?

A. Varying prices within a single market are widely found in American industry. Ladies' handbags, for example, range in price from $2.50 to $50. At least, in walking [fol. 1840] through Macy's, I noticed this.

With respect to this case, however, the fact that sewing machines with machine-carried multi-cam mechanisms, the replaceable cam mechanism, the manual mechanism, and with the zigzag attachment mechanism compete with each other and are interchangeable marketwise is shown, among other things, by the fact that they are not to be found in separate price categories from each other. The price chart shows that within the relative price preference range the housewife may shop, she has equally available to her competing models of sewing machines with machine-carried multi-cam mechanisms, replaceable cam mechanisms, manual mechanisms and zigzag attachment mechanisms.

If, for example, she wants a machine of top quality, reliability and available service, she has a choice of a sewing machine with built-in cams such as the Singer 401 machine or a sewing machine with replaceable cams such as the Necchi Supernova, or the manually operated Pfaff machine, or the Singer 404 straight stitch machine with its zigzag attachment as standard equipment.

If, on the other hand, she wants to spend less than $100 on a sewing machine, she still has a choice of a sewing machine with a built-in multiple-cam mechanism or a re- [fol. 1841] placeable cam mechanism or a manual mechanism or a zigzag attachment mechanism.

Thus, even if you classify sewing machines on the improbable basis of the mechanism by which the zigzag stitch is made, price considerations do not negate my feeling that all these machines compete in a single market.

Q. Dr. Cohen, have you had prepared a chart showing the different types of Japanese sewing machines imported into the United States from the facts stated in the hypothetical question and which are taken from the stipulation of facts?

A. Yes, sir, I have.

Q. May we produce such chart.

Mr. Klots: This, your Honor, I think is of very important significance. I offer it in evidence.

The Court: Where are the figures obtained from that are reflected in this chart?

Mr. Klots: They are obtained from the stipulation of facts, sir.

The Court: Do you represent this as being a graphic presentation of the facts as stipulated?

Mr. Klots: That's right.

The Court: You have no objection, subject to checking into it, have you?

[fol. 1842] Mr. Elkins: No, your Honor.

The Court: All right. Received in evidence.

(Received in evidence as Defendant's Exhibit 175.)

The Court: If you find anything wrong in this, call it to Mr. Klots' attention and he will correct it.

Mr. Klots: I would like to give you a nice little copy to have before you, your Honor.

Q. Will you explain, Dr. Cohen, in your own words just what that chart shows.

A. As I see it, in the year 1957 there were approximately nine-hundred-plus thousand Japanese sewing machines imported into the United States, of which machines straight stitch constituted about or close to 700,000, manual about 100,000, replaceable cam approximately another 100,000, and machine-carried multiple-cams the smallest segment of the category, this top green bar.

Mr. Klots: Your Honor might perhaps see it better on the big chart.

The Court: I can see it now. I don't have any difficulty in interpreting this.

Q. Go ahead, Dr. Cohen, and tell us a little bit more about it.

A. In 1958 the comparable figures, the only change is [fol. 1843-1845] that this small red bar indicates the so-called non-infringing machines, as I understand it, and then for 1959 you get the picture of this over one million ma-

chines imported from Japan, of which machine-carried multi-cams were a very small segment, some of which apparently were infringing and some of which were non-infringing.

Mr. Klots: That is the significance, your Honor.

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[fols. 1846-1853] New York, June 19, 1961.

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[fol. 1854] Francis Y. Sogi, called as a witness on behalf of defendant, having first been duly sworn, testified as follows:

Direct examination.

By Mr. Wesely:

Q. Mr. Sogi, where do you reside?

A. 1 Payne Road, Elmsford, New York.

Q. Are you a practicing attorney?

A. Yes, I am. I am a partner in the firm of Hill, Betts, Yamaoka, Freehill & Longcope, with offices at 26 Broadway; Washington, D. C.; Tokyo, Japan; and Paris, [fol. 1855] France.

Q. How long have you been associated with that firm?

A. Since 1952.

Q. Please state the universities and colleges you have attended, the years you have attended them, and the degrees you have received.

A. I attended the University of Hawaii from 1941 to 1943 when I left for service with the Military Intelligence Service Language School as a student and as an instructor and later as an officer of the Counter Intelligence Corps in Japan. In 1947, after leaving the service, I returned to the University of Hawaii, graduating in 1949 with a degree of Bachelor of Arts. From 1949 to 1952 I attended the

Fordham University Law School, graduating with a Bachelor of Laws degree. I also attended the Chuo University Law School in Tokyo where I audited courses between 1953 and 1954. I audited courses concerning Japanese law on contracts, negotiable instruments and admiralty.

[fol. 1856] Q. Are you licensed to practice in the State of New York?

A. Yes, I am. I was admitted on December 1, 1952.

Q. Are you a member of the Bar of any other court in the United States?

A. Yes. I was admitted to practice before the United States Supreme Court in December 1956.

Q. Are you licensed to practice law in Japan?

A. Yes, I am. I was admitted in August 1953 under a special provision of the Japanese Lawyers Law.

Q. Have you practiced law in Japan?

A. Yes, I did, for two and one-half years from 1953 to 1955.

Q. What was the general scope of your practice in Japan?

A. My work consisted in advising my firm's clients concerning commercial, patent and admiralty matters. I also appeared in Japanese courts representing these clients.

Q. Have you practiced law in the United States?

A. Yes. Prior to going to Japan to our Tokyo office and since my return in 1955.

Q. What has been the general scope of your practice in the United States?

[fol. 1857] A. My work has been general counsel work, advising clients concerning commercial matters, admiralty and corporate matters.

I have also appeared in the New York State and Federal Courts in behalf of these clients.

Q. Are you a member of any Bar association?

A. Yes, I am a member of the American Bar Association, the Association of the Bar of the City of New York, and the First Tokyo Bar Association.

Q. Have you previously testified as an expert on Japanese law?

A. Yes, I did once before, in the case of Metall Bodio

A.G. against Miles Metal Corporation. That was a case in the Supreme Court, New York County.

Q. What is your acquaintanceship with the Japanese language?

A. I read, speak and write Japanese fluently.

Q. Mr. Sogi, at my request have you made an investigation into the law of Japan with respect to the export of household sewing machines from Japan to the United States?

A. Yes, I have.

Q. What has been the scope of your investigation?

A. I have checked the statutes, cabinet orders, ordinances, [fol. 1858] directives and regulations, each of which has the force of law.

Q. Does the law of Japan provide for the control of the export of household sewing machines from Japan to the United States?

A. Yes.

Mr. Elkins: I object, your Honor. We object on the ground that it is irrelevant.

The Court: Overruled.

Q. I will repeat my question, Mr. Sogi. Does the law of Japan provide for the control of the export of household sewing machines from Japan to the United States?

A. Yes.

Q. What types of control does the law of Japan provide with respect to the export of such machines from Japan to the United States?

A. The law provides control as to the quantity, quality, price, the kind and term of payment of commodities exported from Japan, and also the law provides in certain cases an export will be prohibited if the export transaction is not in accord with the controls set forth by the law.

Q. What are the Japanese laws which provide for the [fol. 1859] fixing of quantity and price of household sewing machines exported from Japan to the United States?

A. There is the Export and Import Trade Law. There is the Medium and Small Enterprise Organization Law. There is the Directive—Directive No. 79, which was issued by the Minister of International Trade and Industry, and Regulations promulgated by the Exporters Association.

Q. What does the Export and Import Trade Law provide with respect to fixing quantity and price?

A. Article 5 of the Export and Import Trade Law provides that exporters may enter into agreements on price, quantity, quality or any other matter concerning export trade of specific commodities for export to specific destinations upon filing of such agreement ten days prior to putting such agreement into effect.

Article 11 of the same law provides that exporters may form associations and agree upon price, quantity, quality or any other matter pertaining to the export of specific commodities to specific destinations, provided that such association file with the Minister of International Trade and Industry the agreement or control exercised over its member ten days prior to putting them into effect.

[fol. 1860] Q. Does the Minister of International Trade and Industry have any power with respect to the filings which are made with him?

A. Yes, he does.

Q. What power does he have?

A. He has the power to amend or prevent any agreement from being put into effect.

Mr. Wesely: May I have the Japanese text and English translation of the Export and Import Law marked for identification.

The Court: You do not have to put the Japanese text into evidence because I cannot read it.

Do you have a recognized publication here?

The Witness: Yes, sir.

The Court: In English?

The Witness: Yes, sir.

The Court: Do you want to have it marked? You may refer to that. You can mark it for identification.

(Marked Defenadnt's Exhibit 176 for identification.)

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[fol. 1861] By Mr. Wesely:

Q. Mr. Sogi, is Defendant's Exhibit 176 for identification an accurate translation of the Japanese text of the Export and Import Trade Law?

[fol. 1862] A. Yes, it is. With respect to the Articles that I testified to, namely, Articles 5 and 11, I have checked the translation personally with the Japanese text, and the translation is accurate and correct.

Mr. Wesely: I offer it in evidence.

The Court: I will take that portion which he says is a translation in evidence.

The Government has an exception.

(Defendant's Exhibit 176 for identification received in evidence.)

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[fol. 1863] Q. Mr. Sogi, does the Medium and Small Enterprise Organization Law relate in any way, directly or indirectly, to the export of household sewing machines from Japan to the United States?

A. Yes, sir, it does. Article 9 of the Medium and Small Enterprises Organization Law provides that medium and small enterprises in Japan may form an association when competition among them has gone beyond the normal degree, and such competition has affected or has injured the smooth operation of transactions by such enterprises, and also when a substantial portion of the management of such enterprises has become or threatens to become unstable.

Article 17 of the same law provides that these associations may impose restrictions among its members or among their members concerning the kinds of and amount of production, shipment and handling of goods, production facilities, the amount or method of purchase of raw materials for such commodities.

The law also provides in certain cases where the situation explained in Article 9 cannot be overcome the Association may enter into or fix prices.

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[fol. 1864] Q. Mr. Sogi, are the specific articles of the Medium and Small Enterprise Organization Law about which you have testified an accurate translation as they appear in Defendant's Exhibit 177 for identification—an accurate translation of the Japanese text of those articles?

A. Yes, I have checked those translations and have found them to be accurate and correct.

Mr. Wesely: I offer Defendant's Exhibit 177 in evidence.

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[fol. 1865] The Court: Is that recognized by those learned in this field of law as being a classic acceptance of publication?

The Witness: Yes, for American attorneys practicing in Japan this publication is relied upon as the translation with which they would deal with in their daily work.

The Court: And accepted as such?

The Witness: Yes, sir.

The Court: Objection overruled. I will receive it.

(Defendant's Exhibit 177 for identification received in evidence.)

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[fol. 1866] The Court: Exhibit 176 I have taken into evidence upon his testimony that certain portions of it contain an accurate translation of the Japanese laws and regulations. That has been received in evidence, with an exception to the government, but I do not want to have the whole book in evidence.

I understood that you are going to photostat such portions as are relevant to the matter before us, according to your contention.

Mr. Wesely: Yes, I will, your Honor.

The Court: All right, and you are going to give a copy to Mr. Elkins and a copy to me?

Mr. Wesely: Yes, your Honor.

Mr. Elkins: And as to only part of it being in evidence, your Honor, we will in due time, when it is available, go [fol. 1867] over it to determine whether there is any occasion for other parts going in—having in mind that Article 5, which is in, might be modified, say, by Article 21. I don't know.

Q. Mr. Sogi——

The Court: Again I want to repeat I regard this as possibly a very important point in this case, you see, be-

cause of the very narrow nature of the government's charge here in that it is charged that the defendant and others conspired to impose restraints upon the importation of one particular type of machine imported from one particular country. It may be very important—at least it is a very novel situation where so narrow a charge concerns the operation of a national industry, which is subject to what may well be cartel regulations.

Mr. Elkins: No, we do not so view it, your Honor, as we have said before.

The Court: So view what? As a new or novel point?

Mr. Elkins: This material. No, we do not believe that it is relevant, as we have stated before.

The Court: I just do not get your position.

Is it the government's contention that you do not dis- [fol. 1868] pute that the Japanese machines were exported under a cartel arrangement which controlled the quantities and apportioned quantities and prices?

Mr. Elkins: We would not call it a cartel, your Honor—any kind of unlawful combination.

The Court: Well, it wasn't unlawful under the laws of Japan. It would be unlawful if we applied the principles of American antitrust law, if there was an attempt, unlawful per se, as you so frequently used the term—an attempt to control territories, allocate customers, apportion business amongst manufacturing concerns.

All right. I regard this as a very important part of my decision on the problem that I am confronted with.

I cannot recall any case, as I have said before, where the charge of the government is so narrow and so limited.

Mr. Wesely: Your Honor, we are still looking for such a case, and have not found it.

The Court: All right.

Mr. Elkins: For what it is worth, I cannot imagine any case being brought in relation to the conspiracy than a conspiracy that involves an entire nation for a period of [fols. 1869-1870] seventeen years—that being the life of a patent. I cannot imagine anything more broad. And, your Honor, there has been frequent discussion during——

The Court: I am glad you have a very limited imagination; you become very prosaic.

* * * * * * *

Q. Mr. Sogi, have Japanese exporters of household sewing machines formed the sort of association contemplated by the Export and Import Trade Law?

A. Yes, sir, they have.

Q. What is the name of that association?

A. The Japan Sewing Machine Exporters Association.

Q. Has that Association promulgated regulations respecting quantity and price of household sewing machines exported from Japan to the United States?

A. Yes, sir, they have.

Q. Have such regulations been approved by the Minister of International Trade and Industry?

A. Yes.

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[fol. 1871] (Received in evidence as Defendant's Exhibit 178.)

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Q. Mr. Sogi, what do these regulations, Defendant's Exhibit 178 in evidence, provide with respect to the fixing of quantity of household sewing machines exported from Japan to the United States?

A. The regulations provide the total export quantity of household sewing machines that may be exported to the United States, Puerto Rico and Canada.

It also provides the allocation of the total quantity determined by the Minister of International Trade and In-[fol. 1872] dustry.

It further provides the assignment of the quantity established.

It provides that the Association's confirmation must be first obtained by the exporter to the effect that none of the regulations provided in these regulations are being violated before the application for an export license is made to the Minister of International Trade and Industry, pursuant to the Export Trade Control Order.

There are provisions with respect to penalties that may be imposed upon members who violate the terms of the regulations.

There are also provisions pertaining to policing compliance by members of the regulations.

Q. Mr. Sogi, do the regulations provide for the allocation of total quantity to specific manufacturers?

A. You mean exporters.

Q. Exporters. I am sorry.

A. Yes.

Q. Do they provide for assignment among exporters?

A. Yes.

Q. What do the regulations of the Japanese Sewing Machine Exporters Association provide as to the price of household sewing machines exported from Japan to the [fols. 1873-1874] United States?

A. There are regulations pertaining to the minimum price under which an exporter may not export household sewing machines for all countries in the world.

There are provisions pertaining to prohibition against entering into a contract for the export of household sewing machines for less than the minimum price established in the regulations.

The regulations also provide that the Association's confirmation must first be obtained, to the effect that the price at which the household sewing machine is being exported is not less than the minimum price set forth, and also to the effect that the provisions of these regulations are not being violated before an exporter makes an application for an export license to the Minister of International Trade and Industry.

There are also provisions concerning penalties that may be imposed upon a member who violates the provisions.

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[fol. 1875] (Received in evidence as Defendant's Exhibit 179.)

By Mr. Wesely:

Q. Have Japanese manufacturers of household sewing machines formed the sort of association contemplated by the Medium and Small Enterprise Organization Law?

A. Yes, they have.

Q. What is the name of that association?

A. The Federation of Japan Sewing Machine Export Promotion Association which I understand is also known as the Japan Sewing Machine Manufacturers Association.

[fol. 1876] Q. Has the Minister of International Trade and Industry promulgated regulations respecting the quantity and price of household sewing machines exported from Japan to the United States?

A. Yes.

Q. Please identify those regulations.

A. This is called an adjustment regulation pertaining to household sewing machines for export. The regulations were promulgated as Ministerial Directive No. 79 issued by the Minister of International Trade and Industry, and the date of this directive is August 1, 1959.

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Q. What do the Regulations, Ministerial Directive No. 79, provide as to the quantity of household sewing machines for export?

A. It provides the basic quantity for the association, the total adjustment quantity, the allocation of adjustment quantity to the members of the association, the carryover [fol. 1877] of adjustment quantity, the transfer or assignment of adjustment quantity, the return and reallocation of the adjustment quantity.

Q. Are there provisions in Ministerial Directive No. 79 respecting incentive allocations and special allocations?

A. Yes. Where a manufacturer produces machinery, household sewing machines, for export in complete form, or when 50 per cent or more of the adjustment quantity for the two immediately preceding periods has been exported to the United States on a continuous basis, there is an incentive quota assigned to the manufacturer. A special quota is allocated to the manufacturer who produces household sewing machines of a special design.

Q. Is there a provision for a special allocation for machines of unique design in these regulations?

A. Yes.

Q. Mr. Sogi, is the adjustment quantity the same as the working quota? Is working quota a fair translation of adjustment quantity?

A. Yes.

Q. What do the regulations contained in Ministerial Directive No. 79 of the Ministry of International Trade

and Industry provide as to the price of household sewing [fols. 1878-1879] machines?

A. The regulation provides that a manufacturer may not sell machinery for export—this is household sewing machines for export—at less than a stipulated minimum price.

Q. What agency is responsible for the administration of these regulations?

A. The administration of these regulations has been delegated to the Japan Sewing Machine Manufacturers Association.

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[fols. 1880-1881] (Received in evidence as Defendant's Exhibit 180.)

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[fol. 1882] By Mr. Wesely:

Q. Mr. Sogi, what are the Japanese laws which provide for fixing minimum quality control with respect to household sewing machines exported from Japan to the United States?

A. There are the Light Machinery Export Promotion Law, the Export Inspection Law and Cabinet orders and directives issued by the Minister of International Trade and Industry.

Q. What does the Export Inspection Law provide as to fixing minimum quality controls?

The Court: I don't see that this would be material, Mr. Wesely. It doesn't seem to be part of a cartel.

Mr. Wesely: Except, your Honor, that characteristically the fixing of minimum quality controls is one way of excluding certain kinds of machines.

The Court: Well, all right, I will take it and see what this law is, but offhand it would seem to me that this would not be part of a cartel arrangement. Maintenance of price, limitation on quantity of exports to the United States, the quantity of the exporter, that all might be part of a cartel arrangement, but the establishment of laws [fol. 1883] that, for instance, would require proper label-

ing is similar to our Wool Labeling Act here and would not be part of a cartel or part of an enforcement of a cartel.

Q. Mr. Sogi, does the government in Japan prescribe detailed standards to be applied in the methods of inspecting household sewing machines for export?

A. Yes. They have the standards set forth in the Export Inspection Law and Ministerial Directive No. 40 which was amended by Ministerial Directive No. 9 dated March 1, 1960.

Q. Generally what are the standards or types of standards covered?

. . . . . .

A. The ministerial directive provides standards as to the physical appearance of the household sewing machine, the electrical equipment, the internal parts and other matters pertaining to the operation of the household sewing machine.

[fol. 1884] Q. Do the two ministerial directives, No. 40 and No. 9 about which you have testified, apply to the inspection of household sewing machines and parts?

A. Yes.

Q. Is that by provision of Cabinet order?

A. The ministerial directive specifically refers to the household sewing machine, both the zigzag stitch and the regular stitch.

Q. What is the scope of the power of the Minister of International Trade and Industry under the Export Inspection Law?

A. The Minister of International Trade and Industry may prohibit the exportation of household sewing machines which do not conform to the standards established under the law, the Export Inspection Law.

Q. Is that in a particular article?

A. That is Article 2, and Article 3 of the Export Inspection Law provides the manner of inspecting and the requirement that upon inspection the household sewing machine must bear a label certifying that inspection has been made in accordance with the law. Article 4 of the Export Inspection Law provides for the inspection of ma-

terials used for the household sewing machines and in the manufacture of such machines.

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[fol. 1885] Mr. Wesely: I offer those articles of the Export Inspection Law in evidence, your Honor.

Mr. Elkins: I object to that.

The Court: Overruled. I will receive it in evidence. I really don't know whether it is going to be relevant or not. Although I could take judicial notice of foreign law, I don't know whether these regulations are equivalent to foreign law.

What is the legal significance of what you have referred to as regulations?

The Witness: As I stated earlier, your Honor, these have the force and effect of law. These are promulgated based upon the law, and a minister may, by Cabinet order, [fol. 1886] ordinance or regulations——

The Court: Adopt a regulation?

The Witness: Yes, sir. That particular document is the law itself (indicating).

(Received in evidence as Defendant's Exhibit 181.)

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(Received in evidence as Defendant's Exhibit 182.)

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[fol. 1887] By Mr. Wesely:

Q. What does the Light Machinery Export Promotion Law provide as to fixing minimum quality controls?

A. This law provides that a manufacturer of light machinery or light machinery parts, which would include household machines and their parts, must register with the Minister of International Trade and Industry in order to produce machinery for export. Also, in order to be able to export household sewing machines, the sewing machines must bear a special mark on the light machine parts.

Q. Does the Light Machinery Export Promotion Law apply to household sewing machines?

A. Yes, it does.

. . . . . .

[fols. 1888-1889] (Received in evidence as Defendant's Exhibit 183.)

The Court: I may, under the rules, take judicial notice of foreign as well as domestic law.

. . . . . .

[fol. 1890] Cross-examination.

By Mr. Elkins:

Q. I believe you referred to certain regulations that were promulgated in relation to associations under the approval [fol. 1891] of MITI.

A. Yes. There are two sets of regulations promulgated by the Japan Sewing Machine Exporters Association with the sanction of the Minister of International Trade and Industry.

Q. And you are referring to Defendant's Exhibits 178 and 179?

A. Yes, sir.

Q. Both of those relate solely to exports?

A. Yes, sir.

Q. Is it true, sir, that it is not necessary for a person who wishes to export to belong to any one of the associations that you have mentioned in order to export?

A. Under the law there is no legal requirement that an exporter must belong to an association. Under the law, membership in associations is voluntary.

Q. So an exporter, as I understand it, need not belong to an association. It is voluntary as to whether an exporter belongs to an association or not.

A. Under the law, it is not necessary.

The Court: I see, as you gave that answer, you accentuated the words "under the law."

The Witness: Yes, sir.

[fol. 1892] The Court: Was there any special reason for that? What did you have in mind?

Mr. Elkins: Your Honor, if I may say so, this witness is

testifying as an expert on the law, and I hope not to get into local gossip of Tokyo.

The Court: Neither do I, but I want to find out just what he meant by that, and then I will determine whether or not it is local gossip. If it is local gossip, we will strike it from the record. If it is more than local gossip, we won't.

A. As a practical matter, as I understand from my experience over there, not particularly in this sewing machine industry but in other industries, membership in associations is essential to be able to obtain the export quota on a continuous basis.

The Court: Just what do you mean by "essential"? Is it required that you belong to this association in order to get a quota on a continuous basis?

The Witness: Yes, sir. Those who are not members of an association must apply to the Minister of International Trade and Industry on specific transactions with the importers of the foreign country. In other words, he will not be able to commit himself to an importer here, for example, in the United States unless he has a quota on [fol. 1893] hand as he will not know whether, upon application, the Minister of International Trade and Industry will grant him the export privilege.

The Court: And the members of the association are granted these quotas in advance, are they?

The Witness: Yes, sir. The association is granted by MITI, or the Minister of International Trade and Industry, a maximum quantity, a quota for the association.

The Court: So that, if you are not a member of the association, you are not required by law to be a member in order to get an export license, but you have to make an application for an export license directly to the Minister for each particular export transaction.

The Witness: That is my understanding, sir.

The Court: All right. Thank you. Apparently that is not gossip.

Mr. Elkins: Pardon me, your Honor?

The Court: Apparently my interrogation did not elicit merely gossip.

By Mr. Elkins:

Q. Does this Defendant's Exhibit 178, which are regulations, have a date as to when they were written, sir?

A. I am sorry?

[fol. 1893a] Q. Do the regulations which are included in Defendant's Exhibit 178 bear a date of their promulgation?

A. There is no date of promulgation, but it contains the effective date of the regulations.

[fol. 1894] Q. What is the effective date?

A. The effective period is from February 1, 1961 to December 31, 1961.

Q. In regard to Defendant's Exhibit 179, to which you have previously referred, will you give us the effective dates of that regulation, sir?

A. The effective dates are from February 1, 1961 to December 31, 1961.

* * * * * * *

[fol. 1895] CHARLES A. WINTER, called as a witness by the defendant, being first duly sworn, testified as follows:

The Court: Mr. Klots, inquiry has been made as to whether Mr. Winter is a newcomer or a substitute or what.

Mr. Klots: I think Mr. Benbow will explain; it is just to prove an exhibit that I think we have already offered.

The Court: Oh, just on one exhibit.

[fol. 1896] Mr. Klots: Yes, just on one exhibit; that's all.

The Court: All right.

Mr. Benbow: It will be very short.

Direct examination.

By Mr. Benbow:

Q. What is your address, Mr. Winter?

A. 3159 Hull Avenue, New York 67.

Q. By whom are you employed, Mr. Winter?

A. The Singer Manufacturing Company, 149 Broadway, New York.

Q. And what is your position?

A. I am the manager of the Invoice Department of The Singer Manufacturing Company.

Q. Is one of your duties as manager of the Invoice Department to process invoices for sewing machines, parts and needles imported from abroad by Singer into the United States?

A. Yes.

Q. In the course of your duties do you keep track of household sewing machines imported into the United States by Singer?

A. Yes.

Q. Have you had prepared a tabulation, which I now hand you (handing) and does that tabulation show imports of household sewing machines valued over $10 by Singer [fol. 1897] into the United States for the years 1947 to 1959 inclusive?

A. Yes, sir.

Q. Where, Mr. Winter, did you get the figures which you used in the preparation of this tabulation?

A. These figures are taken from records maintained by the Singer Manufacturing Company, 149 Broadway, in its usual, daily business routine.

Q. And was it the duty of Singer employees to keep those records in the regular course of Singer's business?

A. Yes.

Mr. Benbow: I would like to offer it in evidence.

Mr. Elkins: We object, your Honor. The original records should be made available.

The Court: It would be quite cumbersome. You may examine this witness, and if you want to go down and inspect the original records you may do it. It would entail a truckload of papers into this court. There is no need for it. You may have access for the examination of these invoices if you want to.

Do you want to make arrangements now to do it?

Mr. Benbow: Your Honor, I believe we have available in court some examples of the cards and business records [fol. 1898] from which these records were compiled.

The Court: The objection is overruled.

(Received in evidence as Defendant's Exhibit 184.)

The Court: If Mr. Elkins wants to examine these cards, you may show them to him.

Mr. Benbow: I have no further questions, your Honor.

The Court: This is a machine number—not the dollar volume?

The Witness: Yes, that is the quantity.

The Court: The quantity.

The Witness: Yes.

Cross-examination.

By Mr. Elkins:

Q. Does Singer import a machine which has a value of $11?

A. Only exactly $11 or $11 or more?

Q. Eleven dollars or less, sir.

A. Yes, they did in the earlier years; not now.

Q. And was that between $10 and $11 in value?

A. It was less than $10.

Q. Will you describe that machine for us, please?

A. I am not able to describe that. I am an accountant [fol. 1899] and I am not familiar with the construction of a machine.

The Court: You picked up this $10 item.

Mr. Elkins: I want to explore it.

The Court: I would like to ask you why did you make this list entitled Machines Valued at $10 or Over $10, rather? What prompted you to do that as an accountant?

The Witness: That was the instructions that were given to me by the attorneys, and that is what I compiled.

The Court: The lawyers said, "We want a list"——

The Witness: Of machines over $10 and not less than $10 and that is what I furnished.

The Court: Did you find while you were searching for that any machines under $10?

The Witness: There were in the earlier years.

The Court: Earlier years than 1947?

The Witness: Yes.

The Court: What were those—toy machines?

The Witness: No, they were some of the regular sewing machines that were imported without a motor, and in those days costs were lower and they were below $10 at that time.

Q. You say "in those days." Could you tell us——
[fol. 1900] A. In the earlier years—1948 or 1949.

Q. That was not the type of any sewing machine that we see here (indicating)?

A. I am not qualified to answer that question at all.

Q. All right. Do you recall the descriptive nomenclature of the machine, Singer's nomenclature?

A. No.

Q. Did it have a number?

A. It had a number, yes—99K31. That is as much as I can describe it.

Q. In doing this work, sir, how did you define "value" as you use it there in the heading?

A. That was the value that was taken from our supplier's invoice.

Q. And who was the supplier in this case?

A. The Singer Manufacturing Company, Ltd., Scotland.

Q. That was the declared value for purposes of import into the United States, is that it?

A. That's correct, yes.

Mr. Elkins: There are no further questions, your Honor.

The Court: Any redirect?

Mr. Benbow: No redirect, your Honor.

[fol. 1901] The Court: All right. Thank you.

(Witness excused)

The Court: Next witness.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Benbow: Your Honor, we have a few exhibits which I think I can still put in in the limited time remaining, if you will permit.

The first is a tabulation showing—a schedule prepared by the Bureau of the Census of the United States Government, Department of Commerce, of imports for the years 1947 to 1959.

I offer it simply as a substitute for Defendant's Exhibit 174, which was a similar compilation prepared for the years 1948 to 1959, the only difference being that it adds the additional year 1947, and we wish to do that in order to show a more complete picture.

Mr. Elkins: We object, your Honor. This exhibit as offered by the defendant includes industrial type sewing machines, and further than that it is explained on the chart that the data which is reflected there does not reflect revisions made after publication.

Mr. Benbow: Your Honor, the number of industrial sewing machines which are involved in this chart is small, as was pointed out by Mr. Klots the other day, and I have available here a tabulation, again compiled by the same [fol. 1902] Bureau of the Census, covering the year 1960 as well as preceding years, from 1948 onward, which makes clear the percentage or what number of industrial type sewing machines were imported into the United States during the year 1960, and which show clearly that the number of such machines was limited.

I would like to offer that also in connection with this exhibit in order to meet Mr. Elkins' objection.

Mr. Elkins: We submit that this does not meet the objection, your Honor. If they wish to offer it as to 1960, that is something else again.

The Court: First let us rule upon this exhibit that I have here, which is apparently the figures of the United States Department of Commerce, Bureau of the Census, United States imports of sewing machines during the calendar years 1947 through 1959, showing particularly the quantity, the dollar volume and country of origin. The government objects, and the objection is overruled, and the government has an exception.

(Received in evidence as Defendant's Exhibit 185.)

Mr. Benbow: Your Honor, I would still like to offer for purposes of clarification only——

The Court: I am not taking it for clarification. I do [fol. 1903] not know that anything which is in evidence needs clarification. If you want to offer it, offer it.

Mr. Benbow: I would like to offer it because it does carry the tabulation down through 1960.

The Court: It is the same as was admitted but carries it for another year?

Mr. Benbow: Except, your Honor, it does not include 1947 but it does include 1960, which the other did not.

The Court: All right. Show it to Mr. Elkins.

(Document handed to Mr. Elkins.)

The Court: In other words, it has one more year at the end and one less at the beginning.

Mr. Benbow: That's correct.

The Court: All right.

Mr. Elkins: If your Honor please, our objection as to this is the same as our objection to the previous exhibit. It contains figures including industrial machines, and it also states in the note that the data does not reflect revisions made after publication.

The Court: I make the same ruling: objection overruled. We will receive it in evidence, and we will give your objections weight when considering this exhibit. Exception to the government.

[fol. 1904] (Received in evidence as Defendant's Exhibit 186.)

Mr. Benbow: Your Honor, I would now like to offer in evidence the 1954 Census of Manufacturers prepared officially by the United States Government, Bureau of the Census, Department of Commerce, to show the total domestic production of household sewing machines for the years 1947 and 1954, both of which are shown in this.

The Court: In the United States?

Mr. Benbow: In the United States, your Honor.

The Court: Haven't we got that all stipulated by stipulation of facts? Didn't we go into all that?

Mr. Benbow: No, we have not, your Honor. These are new figures which are not now presently in evidence. We have certain figures as to the Singer Manufacturing Company and its production. This shows overall production in the United States for the years 1947 and 1954 of household sewing machines.

The Court: I thought we had already stipulated that Singer is the sole surviving domestic manufacturer of household sewing machines——

Mr. Benbow: That is stipulated.

The Court: —that is left in the United States.

[fol. 1905] Mr. Benbow: That is stipulated, your Honor.

The Court: Do you want to make it any more pressing than that?

Mr. Benbow: We would like to show what the picture was during the years preceding the time when Singer became the sole domestic manufacturer.

The Court: Well, it is a sad story now. All right.

Mr. Benbow: I offer it in evidence.

Mr. Elkins: We object, your Honor. Apparently it relates to only the years 1947 and 1954, both of which antedate anything that is relevant in the matter now before the Court.

Mr. Benbow: Your Honor, we intend to use these as part of the chart. The reason that we are only presenting the years 1947 and 1954 is that these are the only years in which these figures are available when the Bureau of the Census collected them.

We, however, will offer in evidence as a part of this chart, projections taken from these two years and which were available and which will show the approximate figures for the intervening years.

The Court: May I see that.

(Document handed to the Court.)

[fol. 1906] The Court: I will take it in evidence. A couple of more figures won't hurt. What relevance it is going to have I do not know.

Mr. Elkins: May we ask your Honor what part —

The Court: Just that part of 3583 that reads "Sewing machine parts and attachments." That is all we are concerned with here.

Isn't that all you offer it for?

Mr. Elkins: We also object on the ground of hearsay, your Honor. This is not certified at all.

The Court: Apparently it is taken from a government publication. It might have some official certification in there somewhere.

This was taken from Bulletin MC-35, issued in connection with the 1954 Census of Manufacturers by the United States Department of Commerce, Bureau of the Census, under the seal of the Department of Commerce of the

United States Government in the front. It is an official government publication.

I am going to take it in evidence.

(Received in evidence as Defendant's Exhibit 187.)

The Court: If you find it is inaccurate without the certification, you call it to my attention.

[fol. 1907] Mr. Benbow: Your Honor, in order to add one final year to this series, we have available from the Department of Commerce, Bureau of the Census, a certificate showing the total production of household sewing machines for 1958, which we would like to offer in evidence.

When this letter or certification from the Department of Commerce is compared with Defendant's Exhibit 172, which shows the production and sale of Singer sewing machines over the years 1947 to 1959, it will be seen that the figures for total production in the United States for the year 1958 is exactly that shown on the certification which we have received from the Department of Commerce, and we believe this goes to show that in fact the only production of household sewing machines in the United States was by Singer.

[fol. 1908] We would like to establish that fact, and I therefore offer this certification into evidence (handing to Mr. Elkins).

Mr. Elkins: No objection, your Honor.

The Court: Received in evidence.

(Marked Defendant's Exhibit 188 in evidence.)

Mr. Benbow: I have one final exhibit to offer, your Honor, and that is in the reading of the hypothetical question last Monday, you will recall that Mr. Klots made reference to a chart which was shown to the witness as part of the hypothetical question, at transcript pages 1828 and 1829, and the chart relates to the number of Japanese imports into the United States during the years 1957 to 1959.

I would now like to offer it in evidence (handing to Mr. Elkins).

The testimony is in evidence, and this is the chart that was referred to.

I further call your attention to the fact, your Honor,

that all of the statistics shown here are stipulated to as part of the stipulation of facts, and this is a compilation of those statistics.

Mr. Elkins: We object, your Honor, and if it is predi-
[fol. 1909] cated—it is predicated apparently on the stipulation of facts but we cannot find the facts in the facts agreed upon, upon which this is based.

I am offhand acquainted with paragraph 11 which states that in the year 1959 importations of household sewing machines from Japan amounted to 1,100,000 units, and this chart shows a figure of 1,246,898.

The Court: Supposing during recess you point out to Mr. Elkins the particular portion of the stipulated facts or undisputed facts that you say are represented on this compilation.

Mr. Benbow: I will be happy to, your Honor.

The Court: And let him check it up.

* * * * * * *

[fol. 1910] Mr. Elkins: Your Honor, I think it would be advisable to mention now that in relation to the subject matter just discussed, namely, the chart offered by the defendant showing importations of Japanese machines, the defendant put in evidence Defendant's Exhibit 175—and that, too, was subject to checking, and the source as stated on the chart is stipulation of facts, so we cannot find the facts within the agreed statement on which this could be predicated.

So if in addition to discussing the chart just offered we can discuss with the defendant the sources of the information——

[fols. 1911-1912] The Court: Yes.

Mr. Elkins: —of Exhibit 175.

Mr. Benbow: We will be glad to point this out, Mr. Elkins.

* * * * * * *

[fols. 1913-1920] New York, June 20, 1961, 11.00 o'clock a.m.

* * * * * * *

[fol. 1921] Mr. Elkins: If your Honor please, may we have copies of all of the product training material sent out to the personnel, regardless of whether it is sent by the education department.

The Court: That is going to be too much. Now let us stop. That is going to be too much. There might be a lot of material sent out by a public relations department to wear blue serge suits and black ties; that the girls should dress sedately with dresses three inches below the knee and high necks and long sleeves. That is a lot of nonsense.

Mr. Elkins: I agree, your Honor. What we are asking for, to quote the witness, is "a great deal of product training material".

The Court: If there is any product training manual which was prepared by Singer—and by "manual" it does not have to be in one complete book—if it is in a series of books or pamphlets or such as you produced here from Necchi, that is what he wants to see. If you have any covering these 400 machines which detail its features, of its comparison with the other machines, I think you should [fol. 1922] have access to them. It may have a very important bearing upon the issue of relevant market and whether or not there are substitutes still available amongst the Japanese importations.

Mr. Pettit: We will be very glad to have him look at it.

The Court: You are going to get that this afternoon.

Mr. Elkins: Thank you.

The Court: If there is anything there, you may look at it.

Now is there anything else that you have in mind, Mr. Elkins, before we get down to the evidence?

Mr. Elkins: Can't we have this material at our office, your Honor——

The Court: Oh, now, stop, please. I think it is now—let me say this on the record, I find that the defendant has been most cooperative with the Court in the produc-

tion of its records from the very time we began our pretrial hearings, and at that time it was also quite apparent that long prior to the filing of this suit the defendant made all of its records which had any possible bearing upon this case available to the government.

[fol. 1923] Now there comes a time when you can accommodate the defendant, at least not to the extent of compelling them to bring up a lot of records and disrupt their organization.

If you want to look at these records they are right down there at, I think it is 145 it used to be—in the old Singer Building——

Mr. Pettit: 149.

The Court: —149 Broadway, and Mr. Klots and Mr. Pettit will take you down in a taxicab and see that you are brought back—although I personally feel a nice walk in the open air of those ten blocks might do you a lot of good!

(Laughter.)

In fact it would do me good if I could take it.

Mr. Elkins: If your Honor please, the instrument——

The Court: We have been getting—and when I say "we" I mean the government and the Court have been getting complete cooperation from the defendant with regard to its records. I find no fault and no complaint. All I had to do is make a suggestion and the papers I suggested be produced were produced.

Mr. Elkins: If your Honor please, we see no great dis-[fol. 1924] tinction between product training material that emanates from some department——

The Court: All right, go down there this afternoon——

Mr. Elkins: —of Singer, other than the educational department.

The Court: —and I am sure you will have everything made available for your inspection that bears even remotely upon this matter.

Mr. Elkins: In regard to paragraph——

The Court: There has been absolutely no disposition on the part of the defendant to conceal or withhold anything that is relevant.

• • • • • • •

[fol. 1925] Mr. Benbow: Your Honor, you will recall yesterday at the end of the session Mr. Elkins asked to see the material which supported Defendant's Exhibit 189 for identification, which was the chart of the Japanese machines, which was included—the tabulation of those figures which was included in the hypothetical question.

I met with Mr. Weinstein yesterday to show him that material, and it developed that although the government had stipulated with us to the effect that all of the zigzag machines as shown on those charts—on that chart are accurate figures, and that they are figures of machines imported into the United States, and the basis for that stipulation was the fact that those figures are reflected on the so-called MITI charts which are in evidence, which were appended, first of all, to the stipulation of fact as [fol. 1926] Exhibits S-31 through S-33—one each for the years 1957 to 1959—and those charts were subsequently received in evidence as a part of the material that went in with the stipulation of facts, the government now says that it is unwilling to accept those charts as being the back-up for the additional imports into the United States relating to zigzag type, unknown, and straight stitch machines as shown on Defendant's Exhibit 189 for identification, into evidence.

Therefore, although we feel that Defendant's Exhibit 189 for identification is fully supported by the material which is in evidence and based on the previous stipulations which have taken place, it would be completely reasonable to accept these figures—one set of figures, at least, the Japanese figures of imports into the United States—we are willing to submit, and I do now offer in place of Defendant's Exhibit 189 for identification a chart which characterizes those machines as Japanese approved exports rather than Japanese imports into the United States; because, as I understand it, this is the only objection which the government has, the plaintiff has to the figures as shown [fol. 1927] by those charts, was that difference in characterization.

So I will give you a copy (handing to government counsel), and I would like to offer it in evidence in place of Exhibit 189 for identification.

The Court: Do I read this chart correctly when I read

that only 3 to 4, or 4.6 per cent of all the Japanese machines which have been approved for export are the machine-carried multiple-cam machines?

Mr. Benbow: Based on the MITI charts which are in evidence as Exhibits S-31 through S-33.

The Court: For instance, in 1959, out of almost one and one-quarter million, less than 60,000 of the machines approved for export by the Japanese were of this multi-cam machine?

Mr. Benbow: The less than 60,000 figure was stipulated to, your Honor, between the government and ourselves.

The Court: All right. It becomes more amazing as I listen to the evidence.

Any objection? Received in evidence.

Mr. Elkins: If your Honor please, I think you have asked me whether there are any objections, and I was just about to ask for a moment, please.

[fol. 1928] The Court: Sir?

Mr. Elkins: This chart is based, it seems, on an agreed stipulation, and I am reading the stipulation, your Honor, if you will just give me a moment.

The Court: Yes. I thought Mr. Weinstein had gone over this and approved this.

Mr. Weinstein: We had not seen this before this morning, your Honor. It was just handed to us.

The Court: All right.

(Government counsel examine.)

[fol. 1929] Mr. Elkins: If your Honor please, these statistics are being massacred unholily, and this chart here just does not represent any facts upon which the parties have agreed. It mixes oranges and apples and whatnot. In the first place——

The Court: That sometimes makes a very palatable fruit cocktail.

Mr. Elkins: For that purpose it may have some use, your Honor.

The Court: You claim that this is a compilation of figures that are set forth in the stipulated facts, paragraph what?

Mr. Benbow: 130, your Honor, and in Exhibit S-25 in evidence.

The Court: All right. The Court will receive it in evidence as being the defendant's interpretation of the stipulated facts set forth in those paragraphs and as being a graphic representation of what has been stipulated. If the Court, on examination——

Mr. Elkins: May I explain what the defendant has done here?

The Court: Wait a minute. I am going to give you an opportunity to do so in a moment.

If the Court, on examination, finds that it does not con- [fols. 1930-1936] form to the stipulated facts, the Court will disregard it.

Mark it in evidence as a document submitted to the Court as illustrative, and only as illustrative, of the stipulated facts as set forth in the stipulation of facts.

Now, Mr. Elkins, for the Court's information, you may help me out by pointing out in what respect you claim that this chart, which is submitted to the Court and received solely to help the Court and assist the Court, does not conform to the facts as have been stipulated.

(Received in evidence as Defendant's Exhibit 190.)

* * * * * * *

[fol. 1937]. Mr. Elkins: Your Honor, I believe defense counsel will concede that this figure, say on Exhibit 190, of 57,732 for the multiple-cam machines in 1959 approved for export from Japan is too low, and that actually the figure as to those that were approved for export is much higher.

The Court: How much higher?

Mr. Elkins: I don't recall offhand, your Honor, but we started in our negotiations——

The Court: How much higher does your investigation [fols. 1938-1939] lead you to believe it was?

Mr. Elkins: It would be at least 10,000 higher, your Honor.

The Court: Ten thousand higher, and that's all?

Mr. Elkins: As we recall. We have seen this exhibit here——

The Court: Ten thousand would be less than one per cent of the total Japanese machines imported.

Mr. Pettit: Your Honor, in order to have this both ways, I would like to offer in the chart that we originally offered,

and then have both of them in. This one is entitled "Imports."

The Court: All right, Defendant's Exhibit 189 for identification is now offered in evidence as a chart to assist the Court in interpreting and reading the stipulated facts and it is contended by the defendant to be illustrative of these facts which have been stipulated. Is that so?

Mr. Pettit: That's correct, your Honor.

The Court: I will receive it for that purpose. If I find that it does not conform with the stipulated facts, I will disregard it.

* * * * * * *

[fol. 1940] JEROME B. COHEN resumed.

Direct examination continued.

By Mr. Klots:

Q. Dr. Cohen, let me first ask you this. The hypothetical question which you answered had contained in it Exhibit 189 which has just been received in evidence.

Now I would like to show you Exhibit 190 which has also been received in evidence and ask you if your Honor to the hypothetical question would be different whether it was Exhibit 190 or Exhibit 189.

A. No, sir, it would not.

Q. Dr. Cohen, the last time you were on the stand, you defined your concept of a market. I think it appears at page 1825 of the record. Now I would like to ask you, the concept of market that you had then defined, expressed, how would that apply as to sewing machines?

A. Well, since it is the use or the uses to which the product is put that governs, and since sewing machines are pur-[fol. 1941] chased to sew or, if your will, to sew zigzag stitches, and since sewing machines with machine-carried multi-cam mechanisms, with replaceable cam mechanisms, manual mechanisms and zigzag attachment mechanisms all do this with reasonable effectiveness and facility, then I conclude that they are in the same market.

Applying the tests I mentioned earlier: do these sewing machines all compete for the buyer's favor? Yes, they do. Are the products available in the same product market to the buyer? Various type machines are displayed side by side at the same stores. They are often advertised on the same mat.

Do the products have reasonably similar uses? They all sew. They all sew zigzag stitches.

What could be a more reasonably similar use? Are the products reasonably interchangeable and acceptable for the same purpose? From the facts in your hypothetical question, it would appear that these machines are reasonably interchangeable and acceptable for the same purposes. They are therefore, in my estimation, in the same market.

Q. Have you made any study, Doctor, of the nature and extent of Japanese trade with the United States?

[fol. 1942] A. Yes, I have.

Q. Will you explain what studies you have made.

A. Well, it has been a continuing matter over time. In my last book, Japan's Postwar Economy, I have a chapter, Chapter VIII, called Japan and the United States, which is a study of Japanese-U.S. trade relations. And then in several other instances I have also studied this. For example, two weeks ago I was co-chairman of an American Management Association seminar for businessmen on how to do business in and with Japan, and there, among other things, we discussed Japanese-American trade relations.

Q. In the light of the concept of the market which you have stated previously, would you say in this concept of market that Japanese and European imports compete effectively with Singer sewing machines?

A. Yes, they do. Imports of Japanese sewing machines into the United States market rose from 0 in 1947 or from 3,029 in 1948 to 1,093,000 in 1959. The more than a million units which were imported into the United States in 1959 included machine-carried multi-cam household sewing machines, replaceable cam machines, manual zigzag machines, and straight stitch machines capable of taking a zigzag attachment, and, therefore, of making a zigzag stitch.

[fol. 1943] To indicate the extent of the competition in somewhat different terms, in 1947 Singer's production accounted for almost 57 per cent of household sewing machine

output in the United States, other U. S. producers accounted for about 43 per cent, and imports were negligible.

For 1959, Singer's U.S. production was down to about 21 per cent of the U.S. market, other U.S. producers had been eliminated, and Japanese imports accounted for about 60 per cent of the U.S. market. This is perhaps one of the most competitive blows that U.S. industry has suffered in quite a while.

[fol. 1944] Q. Now Doctor, have you caused to be prepared a chart showing the comparison of U.S. Singer production and imports, Japanese, European and other non-Singer imports and other non-Singer U.S. production of household sewing machines for the years 1947 through 1959?

A. Yes, sir, I have.

Q. I show you this and ask you if this is the chart to which you refer (indicating)?

A. Yes, sir, it is.

Mr. Klots: May we mark this for identification.

(Marked Defendant's Exhibit 191 for identification.)

By Mr. Klots:

Q. Now Doctor, would you just explain this chart before we offer it in evidence?

Mr. Elkins: May we have, if your Honor please, a copy of the exhibit?

Mr. Klots: We have not had time to do that, Mr. Elkins. We will have it tomorrow for you—so if you cannot see it we will move it around.

Q. Will you explain the significance of the chart?

A. Proceeding up the segments of the bar, the lower blue segments are Japanese imports of household sewing [fol. 1945] machines.

We took total imports of Japanese sewing machines and adjusted them to eliminate industrial sewing machines, so this represents an adjustment for household sewing machines alone.

In the yellow bar we have European and other imports, which excludes Singer imports, and it also has been adjusted to eliminate imports of industrial sewing machines.

We see in the green bar two segments, the solid green

segment is Singer production in the United States, and the other part of the bar is Singer imports into the United States—again with industrial sewing machines eliminated.

Q. And what is the red at the top?

A. The orange segment is other U.S. production, and this was derived from the Census of Manufactures for 1947, for 1954 and for 1958, and an interpolation was made to secure the figures for the intervening years.

I might say that this bar represents the difference between the total—the orange segment represents the difference between the total output of household sewing machines in the United States. Subtracting Singer production you [fol. 1946] get a residual, which is all other U.S. products.

Mr. Klots: Your Honor, yesterday there was put in evidence the certified statements from the Department of Commerce showing imports from 1947 to 1959. That perhaps would be Exhibit D-185.

Those are the figures which we rely on when we talk about the imports.

Q. Is that right?

A. Yes.

The Court: Am I to understand that this chart is a graphic representation of what is statistically reported on Exhibit 185?

Mr. Klots: On Exhibit 185 plus some other exhibits, but it is all based on data which is now in evidence.

The Court: All Census reports of the United States.

Mr. Klots: Census reports and Singer statistics—for example, Singer imports.

The Court: I see.

Mr. Klots: There is one matter that I would like to have the doctor explain, and that is this adjustment that had to be made on account of some industrial machines are [fol. 1947] included in the import figures that we got from the Department of Commerce, and it was not until 1960 that the Department of Commerce distinguished between the household sewing machines and the industrial sewing machines.

In 1960, which is in evidence, I think, as Exhibit 186, the Department of Commerce actually showed the number of sewing machines of the household type and the number of the

industrial type. We have used that percentage and made the adjustment for the preceding years of the same percentage as was actually shown for 1960 in Exhibit 186——

Q. Is that right, Doctor?

A. Yes.

Mr. Klots: And we have had to interpolate because the Department of Commerce does not show these orange statistics, except for the years 1948, 1954 and——

The Witness: 1947.

Mr. Klots: 1947, 1954 and 1958.

So that these orange parts or bars had to be interpolated in between those years.

Q. Is that method of interpolation, Doctor, a standard statistical way of doing it?

A. Yes. We use the straight line linear technique, and I [fol. 1948] have a chart which will show it, if anybody cares to see it, just how it was done.

Q. Well, I do not know that that is necessary, but that is the way it was done?

A. Yes.

Mr. Klots: I offer this chart in evidence.

Mr. Elkins: We object. It is based on error multiplied by error. It is predicated on charts which show industrial machines included with the machines—the number of household sewing machines imported into the United States.

The Court: The witness says that he has adjusted this. Perhaps Mr. Klots, you had better go ahead with the graph and show how he did adjust it.

Mr. Klots: All right.

The Witness: There are two different adjustments.

The Court: Explain to us, in the light of the objection that has been made, just how you have adjusted this so as to exclude the machines other than the household sewing machines.

Mr. Elkins: And as I understand it, this is coming in as an "aid" to the Court?

The Court: I do not know what you mean by "aid" to [fol. 1949] the Court.

Mr. Elkins: It doesn't appear to be any kind of an aid, I submit, your Honor, if it has to depend upon interpolation,

and if it has to depend upon cases as to what the industrial machine imports were for a number of years.

The Court: We do not know what this witness is going to testify to at this point, but he has given evidence of great learning, of great intelligence, of extreme familiarity with this economic field, and on relevant market.

I will take his testimony for such guidance as I think it will give me.

Explain to me how you have, in the preparation of this chart which is now offered in evidence, taken the figures of the Department of Commerce which included machines other than household machines—how you have been able to prepare this chart which concerns only the household sewing machines.

The Witness: It is a relatively simple adjustment. We have for the year 1960 total imports of sewing machines over $10, broken down into household types and industrial types. If we take the per cent which industrial bears to the total, in the case of Japanese, for example, industrial was [fol. 1950] 5.25 per cent of total sewing machine imports in 1960 for Japan. If we then applied that same 5.25 per cent to each of the previous years, we then eliminated the amount of industrial machines which we assume to have been imported in the past years, based on the 60 per cent figure—and we did that for the case of each of the countries that went into the composite, which produced this (indicating) as well as this (indicating).

Mr. Klots: Pointing to the yellow, indicating the European imports, and the blue or purple, indicating the Japanese imports.

The Witness: That is right.

The Court: You said there was another adjustment that you made?

The Witness: Yes.

The Court: Explain that.

The Witness: The second adjustment was done to get this bar (indicating).

The Court: By "this bar" you are indicating——

The Witness: Other U.S. production.

The Court: "U.S. production"?

The Witness: Yes.

The Court: I see that in 1959, on this chart, you have no

[fol. 1951] other U.S. production of household sewing machines in the whole United States, other than Singer.

The Witness: The 1958 Census of Manufactures showed by not reporting the figure—by reporting the figure would have revealed the statistics for one company, and it is their custom when the statistics will reveal the figure for one company not to show it. Therefore Singer wrote to Census and got a certified copy what the figure would have been had it been reported, and it coincided with the Census production for 1958.

Mr. Klots: And that is Exhibit 188 that went in yesterday.

The Witness: (Continuing) And that is the reason, for other production by that time had been eliminated.

The Court: There is no other U.S. production of household sewing machines in the United States at this time?

The Witness: I believe this to be substantially the fact. Now we took the Census of Manufactures figure for 1947, for total United States production of household sewing machines, and we subtracted from that Singer production, which gave us all other U.S. production.

[fol. 1952] We did the same thing for 1954, which gave us all other U.S. production, and then we drew a straight line, and by interpreting in a linear equation, which I do not want to get into great detail now, you can pick the figures off the chart, you see. For example, if this 1947 figure——

The Court: That is the chart and the graph you prepared with the linear equation?

The Witness: Yes.

The Court: You offer it in evidence, do you, Mr. Klots?

Mr. Klots: I do. I offer it in evidence.

The Court: As an exhibit to accompany the major chart.

Mr. Klots: That is right.

The Court: We will mark that A—you offer it in evidence. It is received in evidence. The government's objection is overruled, and you may have an exception, and it is received as offered by the defendant, as an aid to the Court to assist the Court in the interpretation of the Census report.

If it does not conform with the Court's view, it will be disregarded. The government has an exception.

[fol. 1953] (Defendant's Exhibits 191 and 191-A marked in evidence.)

The Court: We will take a five-minute recess.

(Recess)

Mr. Klots: I want to make clear, sir, that we are offering this chart as an aid to the Court not only in interpreting the Census figures but any other evidence that is in the case.

The Court: And if I find that it is not so—it is simply what you contend is a graphic presentation of the documentary proof which has already been received.

Mr. Klots: That is right, sir.

The Court: All right, if it isn't I won't pay attention to it.

Mr. Klots: It can be used as an aid in interpreting the evidence.

The Court: It gives me a visual presentation.

Mr. Klots: Here is another chart which we offer on the same basis, which is exactly the same figures but put in percentage terms.

By Mr. Klots:

Q. And did you cause that chart to be prepared, Dr. Cohen?

A. Yes, I did.

[fol. 1954] (Marked Defendant's Exhibit 192 for identification.)

By Mr. Klots:

Q. This chart has the same source of information, does it not, Dr. Cohen?

A. Yes, it is simply a percentage representation of the unit figures in the other chart.

Mr. Klots: I offer it in evidence as an aid to the Court.

The Court: It will be received. The government will have an exception.

Mr. Elkins: We object to it, your Honor.

The Court: It is received simply as being a graphic representation of the defendant's contention of what the evidence already demonstrates statistically, and it is offered as an aid to the Court, and I will accept it. If I find it does not conform to the evidence, I will disregard it.

(Marked Defendant's Exhibit 192 in evidence.)

By Mr. Klots:

Q. One other question, Dr. Cohen, in view of the fact——

The Court: This is a most effective way of presenting evidence for trial purposes, particularly for a jury.

[fol. 1955] Mr. Klots: But I always think charts are very helpful, your Honor.

The Court: Yes.

Mr. Elkins: May I suggest that it depends on how they are drawn, as to whether or not they are helpful to everybody. I think I could draw a beauty but I do not think I would present it to the Court as an aid.

The Court: For instance, you take this last chart. That discloses that Japanese imports are 60 per cent of the total household sewing machine production.

It also shows that there is nobody else in America producing household sewing machines other than Singer.

It also shows that almost one-third of Singer's sales are manufactured abroad.

It also shows that the American production of household sewing machines is down to only about 20 per cent—an astounding situation—and if it is so, and it is substantiated by the evidence, it means we have lost a great American industry.

Q. In the light of the evidence stated in the hypothetical question, what would you say were the possibilities of [fol. 1956] Singer, or any other American company, monopolizing or trying to monopolize a market in which sewing machine products manufactured in Japan are a significant factor.

Mr. Elkins: I object, your Honor.

The Court: What is the ground of the objection?

Mr. Elkins: Number 1, the question—I do not understand the question.

Number 2, I do not believe that the witness has been qualified to answer the question, such as that. It seems obvious that anyone can monopolize anything.

The Court: I am not going to take it as binding. He is simply expressing his expert opinion as an economist.

Ordinarily I would not take evidence of this nature which bears upon the ultimate issue of fact that the Court must

resolve, but in a case of this type with so many exhibits I will listen to him. He may be of some help to guide the Court's mind along investigational lines, and to guide the Court to some extent in evaluating the evidence. Objection overruled.

A. As a——

Mr. Elkins: May I hear the question? I notice the witness [fol. 1957] is about to read his answer. May I hear the question repeated?

The Court: This is expert preparation. I am glad to see an expert do a thing like that.

Mr. Elkins: I am just pointing out that he doesnt have to have it repeated, but I do.

The Court: It shows that it is not an off-the-cuff answer. It shows that he has given it his expert thought.

Mr. Elkins: I am only pointing out——

The Court: I do not find any fault with that.

Mr. Elkins: I am only pointing out that I have to have it repeated, even though he does not. So may I have the question repeated?

The Court: Certainly you may.

(Question read.)

A. As an economist I would say it is impossible. The Japanese have lower labor costs than we do. They have sharply increased their productivity in recent years. They have automated their factories. They have raised the quality and durability of their products. They are an increasingly effective competitor. Even if present tariff rates were doubled, I do not believe it would have the impact of reducing Japanese sewing machine imports significantly. [fols. 1958-1959] The Japanese are most effective and efficient exporters, skilled in the techniques of penetrating world markets. Unless they were to reduce their voluntary quota of sewing machine exports to the United States, or unless we imposed a restrictive quota, the Japanese will continue to be a major factor, and a most vigorous competitor in the United States sewing machine market.

Q. Doctor, was your answer to the last question apparently based on your studies of the Japanese industries and Japanese trade?

A. Yes, sir.

Mr. Klots: I have no further questions.

* * * * * * *

[fol. 1960] Q. You say you did not rely upon sales of Japanese-made machines in the United States in directing or supervising the making of these charts.

A. We used the U.S. Department of Commerce import [fol. 1961] figures.

Q. Yes.

A. Showing Japanese imports into the United States.

Q. All right. And so it is very clear, is it, Doctor, that you did not rely upon sales of Japanese-made machines in the United States?

A. Well, I don't know that there are——

Q. Did you have any figures relating to the sales of Japanese-made machines in the United States?

A. Did I have any figures? No, sir, I did not.

Q. So these charts that were made under your supervision were not predicated on any factor that you could call sales of Japanese-made machines in the United States. Now if you will answer that you can go on, but isn't that true?

A. Well, implicit in my mind is the fact that Japanese imports do represent sales in the United States. Why else would they bring them in?

Q. Now Doctor, you are going to argue. You will agree——

The Court: Don't argue with the witness. Next question. That is the assumption that the professor made.

[fol. 1962] Q. Now you have made the assumption, in other words, that every machine that is imported into the United States has been sold; is that true?

A. No, I don't think I can assume that every machine that was imported was sold. There are probably some still in importers' stocks.

Q. All right. So you can't assume it?

A. No.

Q. All right, so that what you have reflected with the charts that were made under your supervision are two

things: one, Singer's sales, and the other imports, is that true?

A. Japanese imports.

Q. Japanese imports.

A. Yes—European and other imports.

Q. And European and other imports?

A. Yes. I should also add Singer imports as well.

Q. I beg your pardon?

A. I should also add Singer imports as well.

Q. Singer imports?

A. Yes.

Q. Yes. Now Doctor, I direct your attention, if I may, to Defendant's Exhibit 185, which are statistics from the [fol. 1963] Department of Commerce, and particularly to imports from Japan for 1959, and the figure there of 1,093,071; is that right, sir?

A. Yes.

Q. Is that figure quoted accurately by myself?

A. With total imports of over $10.

Q. Yes. Now may I direct your attention to Defendant's Exhibit 189, which in 1959 reports total imports from Japan as 1,246,898.

Have I read it properly?

A. You have read this exhibit properly, yes.

Q. Now which figure, if either, did you rely upon in supervising the making of these charts: the figure of 1,093,000-odd that appears in Defendant's Exhibit 185, or the figure 1,246,898 that appears in Defendant's Exhibit 189?

A. In the making of these two charts——

Q. Yes.

A. —we used the U.S. Department of Commerce figure, which is Exhibit 185.

Mr. Klots: And he is referring to the last two charts which went into evidence, Exhibits——

The Clerk: 191 and 192.

Q. What use did you make, Doctor, in your testimony of [fol. 1964] 1,246,898 which appears in Defendant's Exhibit No. 189?

A. Well, I don't believe that I made any direct use of it except that it was a figure which was used for the chart that was submitted last time when I testified earlier—the chart

showing the totality of Japanese imports for the three years. It was in that chart. I don't think I referred to it at all in my verbal testimony, however—as I recall. This is the chart I am referring to, Mr. Elkins (indicating).

Q. I beg your pardon?

A. This is the chart I was referring to (indicating).

Q. Do you recall opposing counsel asking you a hypothetical question in which he included the statement "the 1,246,898 Japanese exports approved by the Japanese Government in 1959 consisted of" and so forth?

A. Yes, I see that on page 1827 of the testimony, in the hypothetical question.

Q. You would have no knowledge, I assume, Doctor, as to which of these figures represent the Japanese imports—whether it is the 1,246,898 shown in Exhibit 189, or the figure of 1,093,071 as shown in Exhibit 185, would you? Would [fol. 1965] you have any information?

A. Well, technically I would rely most heavily on the United States Department of Commerce figure—I would give greatest weight to the U.S. Department of Commerce.

Q. You agree that both figures cannot be right?

A. Well, if you——

Q. When you said that you would put more weight on the United States Department of Commerce figure, were you indicating, sir, that both figures could not be right?

A. In Exhibit 190 the total of that figure is corrected to read "Approved Japanese exports to the United States", and the figure of 1,246,898 is, as I understand it, derived from the MITI figures—that is, the Japanese Ministry of International Trade and Industry, which gives these figures as approved exports of household sewing machines to the United States.

Q. Yes. Now I have directed your attention, and am still directing you to Defendant's Exhibit 189, which does not talk about, as you see, machines which are approved for exports but actual imports; isn't that true?

A. Then it is probably a misnomer. In other words, the [fol. 1966] more accurate characterization would be Japanese machines approved for export, of that one million, two hundred odd thousand figure.

Q. With relation to Defendant's Exhibit 191-A, Doctor,

which is a linear interpolation, is that what you would call it?

A. I think so, yes. This happens to be a graphic representation of the method of estimating the unknown number of sewing machines of other non-Singer production for the intermediate years, by reference to the known numbers in the years 1947, 1954 and 1958.

Q. What would you have done, Doctor, if you just had figures for the years 1947 and 1958? Would you have drawn a line from point A to what is now point C?

A. If I were using the same technique, I would have done just that.

Q. And your results would have been entirely different if you had run——

A. No.

Q. —A line from the year 1947 down to the year 1958—you would have been off, would you not, some 100,000 for the year 1954?

A. Well, I don't think I would use the expression "off". It would have been a difference in the point that was plotted, [fol. 1967] but the key points would have been exactly the same. In other words, it would have showed that in 1947 you had so much other U.S. production, and by 1958 it had disappeared completely.

Q. Yes. So that if you were to pursue your system there and to draw a line between those two years, a straight line, you would, would you not, as you hit the year 1954, have a figure of around 100,000?

A. It would have shown the downward trend.

Q. Yes.

A. Luckily we have the extra figure which makes it somewhat more accurate than a direct line would have been.

Q. But taking the two years, in the absence of the middle year, if it were not available, your figure for the year 1954 would have come out, would it not, to 100,000 and plus?

A. I don't know, Mr. Elkins. I haven't done it, so I cannot subscribe to your figure.

Q. It is only a straight line, is it not, Doctor?

A. Yes, but we used a formula and a calculating machine to get the exact figure. I said you could plot it off here but we did not do it that way. The formula is a linear represen-

tation of this line. When you solve the unknowns, which I [fol. 1968] will be glad to do if I had a blackboard——

Q. No, you do not have to, but when you are solving for two lines you merely draw a line between them. When you are solving for two points, don't you draw a straight line between them?

A. Well, this linear equation represents that.

Q. Yes.

A. It enables you to read the figure of one axis, making the assumption on the other axis.

Q. So if you had, as I say, the year 1947 and the year 1958 and no other year, you would have drawn a straight line in accordance with your formula, from 1947 to 1958, is that true?

A. I don't know. I might have reviewed the data again, and perhaps do it with another technique. One could fit a curve, for example, into the same data.

Q. And would the curve have been just as accurate?

A. Well, the word "accurate"—these are estimations——

The Court: Aren't you spending too much time on this—the theory of graphs and linear equations? The chart is certainly presented to give a graphic representation that 60 per cent of the domestic sewing machines are of Japanese [fol. 1968a] origin, and only 20 per cent come from United States manufacturers, and 20 per cent are derived from European manufacturers.

Q. Doctor, in relation to these percentages which appear on the charts here——

Mr. Klots: Would you mind giving the exhibit numbers?

Mr. Elkins: It is really not essential, sir.

[fol. 1969] The Court: What is it, 192 and 191?

The Clerk: 192 is on the easel. 191 is on the floor.

Q. Did you have any statistics showing the Singer share of the market in the United States dollarwise?

A. The reason I am hesitating is the "Did you have."

There are figures showing Singer sales dollarwise in the United States.

Q. Yes.

A. We did not use them because we preferred to use the unit figures, the number of machines.

Q. You preferred to use that?

A. Yes. The reason—would you like to know the reason for this?

Q. I beg your pardon?

A. Would you like to know the reason for using unit figures rather than dollar figures?

The Court: Yes, I would. Tell me.

The Witness: The reason is that over a time the price level has risen and the dollar figures would reflect the impact of inflation and you therefore have to deflate for rising prices.

The Court: For instance, a pair of shoes that we might have bought for $12 ten years ago, today we have to pay $24?

[fol. 1970] The Witness: Yes, sir.

The Court: Or for a hat that we used to get up on Park Avenue for $12, now you have to pay $25.

The Witness: Yes.

The Court: All right. A very sensible reason.

Q. Before pursuing this method did you first try it on a dollar basis, Doctor?

A. No, sir.

Q. You did not try it at all?

A. No, sir.

Q. To get the Singer dollar share of the market here in the United States?

A. No, sir.

The Court: The dollar basis might throw us all out of calculation and all out of proportion, you see, because the dollar basis of the American product has increased far more than the dollar basis of the foreign-manufactured product, which makes the Japanese machines more highly competitive.

Mr. Elkins: All right. We have no further questions.

Mr. Klots: I have no further questions.

The Court: All right, Professor, thank you.

[fol. 1971] The Witness: Thank you, sir.

(Witness excused)